

1 IN THE DISTRICT COURT OF THE UNITED STATES

2 FOR THE EASTERN DISTRICT OF MICHIGAN

3 SOUTHERN DIVISION

4
5 JAROSLAW WASKOWSKI,

6 Plaintiff,

7 -vs-

Case No. 11-CV-13036

8
9 STATE FARM MUTUAL AUTOMOBILE

10 INSURANCE COMPANY,

11 Defendant.

12 _____/

13 The Videotape deposition of STEFAN
14 GLOWACKI, M.D., a witness of lawful age, taken in
15 the above-entitled cause, wherein Jaroslaw
16 Waskowski is the Plaintiff, and State Farm, is the
17 Defendant, pending in the District Court of the
18 United States for the Eastern District of Michigan,
19 Southern Division, pursuant to the Federal Rules of
20 Civil Procedure, before Maureen M. McLaughlin,
21 Certified Shorthand Reporter, and Notary Public in
22 and for Oakland County, Michigan, at 40600 Van Dyke
23 Avenue, Sterling, Heights Michigan, on the 14th day
24 of November, 2012, commencing at 1:20 o'clock p.m.

25

1 APPEARANCES:

2 TEMROWSKI & TEMROWSKI

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5 586-254-5566

6 For the Plaintiff

7 BY: LEE ROY H. TEMROWSKI, ESQ.

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12 For the Defendant

13 BY: JAMES HEWSON, ESQ.

14

15 ALSO PRESENT: Don Handyside, Videographer

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MARKED FOR

IDENTIFICATION

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1 Sterling Heights, Michigan

2 11-14-12

3 At or about 1:20 p.m.

4 (Deposition Exhibits Nos.

5 1-10 were marked for

6 identification)

7 - - -

8 THE VIDEO OPERATOR: We are on the record.

9 This is the videotape deposition of Doctor Glowacki
10 being taken in Sterling Heights, Michigan. Today
11 is Wednesday, November 14, 2012. The time is two
12 (sic) twenty twenty. My name is Don Handyside,
13 Notary Public for the County of Oakland. This case
14 is -- this deposition is being taken in the matter
15 of Waskowski v State Farm. USDC case number
16 11-CV-13036.

17 Would Counsel please state their appearances.

18 MR. TEMROWSKI: Lee Temrowski appearing on
19 behalf of Mr. Waskowski, the Plaintiff.

20 MR. HEWSON: James Hewson appearing on behalf
21 of State Farm.

22 THE VIDEO OPERATOR: Doctor, would you raise
23 your right hand, please.

24 S T E F A N G L O W A C K I, M. D.,
25 having first been duly sworn, was examined and

1 testified on his oath as follows:

2 THE VIDEO OPERATOR: Please proceed.

3 MR. TEMROWSKI: Let the record reflect that
4 this is the de bene esse trial deposition of Doctor
5 Stefan Glowacki, M.D., orthopedic surgeon, being
6 taken pursuant to notice and to be used for all
7 purposes intended under the Federal Rules of Civil
8 Procedure.

9 EXAMINATION

10 BY MR. TEMROWSKI:

11 Q. Doctor, good afternoon. Would you please tell the
12 Ladies and Gentlemen of the Jury what your name is.

13 A. Stefan Glowacki, S-t-e-f-a-n G-l-o-w-a-c-k-i.

14 Q. And, Doctor, could you tell us where this
15 deposition is being taken today?

16 A. In my office on Van Dyke in Sterling Heights.

17 Q. And, Doctor, what is your occupation?

18 A. Physician, M.D.

19 Q. And do you have a specialty, Doctor?

20 A. Yes, sir.

21 Q. And would you tell the members of the Jury what
22 that is?

23 A. Orthopedic surgery.

24 Q. Now, Doctor, briefly, would you please explain to
25 the Ladies and Gentlemen of the Jury -- tell us

1 something about the field of orthopedic surgery.

2 What -- what does it encompass?

3 A. Orthopedic surgery involve treatment of
4 musculoskeletal system, muscle, joints, ligaments,
5 bone and the nerve involve in the area of the bone
6 and joints, disease of the bone joints and the
7 spine, tumor, malformation, congenital malformation
8 and a fracture.

9 Q. And, Doctor, for how many years have you been
10 practicing in the field of orthopedics?

11 A. Since 1960.

12 Q. And are you in private practice?

13 A. Yes, I am in a private practice.

14 Q. And, Doctor, during those years of performing
15 orthopedics, have you, in the past, performed
16 surgeries on individuals?

17 A. Yes. I stopped doing surgery when I reached
18 sixty-five years of age.

19 Q. And, Doctor, could you just tell the members of the
20 Jury when you were performing surgery, what type of
21 surgeries would you perform?

22 A. Artificial hip, artificial knee, artificial
23 shoulder, elbow, neck surgery, back surgery, broken
24 bone, tumor of the bone, tumor of the muscle,
25 repair of ligaments, removal of the broken pieces.

1 Q. Doctor, I've had marked today as Plaintiff's
2 Deposition Exhibit Number 1, and I'll just show
3 that to you, which is your -- your resume.

4 A. It's my resume.

5 Q. Okay. You have a copy there. Is this resume
6 current and up-to-date?

7 A. Yes, sir.

8 Q. And it indicates where you went to school and your
9 license, correct?

10 A. Yes, sir.

11 Q. Okay. Doctor, I would like to now ask you some
12 questions about my client and your patient,
13 Jaroslaw Waskowski, and I'll begin by asking, do
14 you have with you here today at this deposition,
15 Mr. -- your complete file on Mr. Waskowski?

16 A. Yes, sir.

17 Q. And, Doctor, if at all during today's deposition if
18 you need to refer to your file, please do so, okay?

19 A. Thank you.

20 Q. Okay. Now, Doctor, could you begin, please, by
21 telling us when and where did you first see Mr.
22 Waskowski as your patient?

23 A. Probably January after the accident, which he have
24 in December. To be exact, I saw him in January
25 2010.

1 Q. Okay. Was that January 13th?

2 A. Yes, sir.

3 Q. Okay.

4 A. January 13, 2010.

5 Q. Doctor, in a moment --

6 A. Accident happened December 23, 2009.

7 Q. Okay. In a moment I'm going to hand you another
8 package of documents, Plaintiff's Exhibit Number 2,
9 which are reports that you wrote on Mr. Waskowski,
10 but if you could find your report dated January
11 13th, 2010, I'd like to go through that with you.
12 Actually, if you want to look at mine, I can let
13 you look at it.

14 A. Okay. Because it's -- it's too thick. It's three
15 years of treatment.

16 Q. Why don't you take a look at the report I've had
17 marked here.

18 A. Yes, sir.

19 Q. Okay. What were the complaints that Mr. Waskowski
20 had the very first time that you saw him as your
21 patient?

22 A. Back pain, leg pain, lower back pain since the
23 accident on December 23, 2009.

24 Q. Okay. And did Mr. Waskowski tell you something
25 about how that accident happened?

1 A. He was restrained driver, stationary at the red
2 light when another car hit him going different
3 direction in front left of the car in which he was
4 sitting. He was turned around few times, and
5 pushed across two driving lanes and end up on the
6 opposite side of the street.

7 At the accident he has lost consciousness. He
8 does not remember what exactly happened.

9 After accident EMS pick him up and he did not
10 want to go to hospital. His daughter came, pick
11 him up and took him home.

12 Q. Doctor, you are from Poland and Mr. Waskowski is
13 Polish, correct?

14 A. That's correct.

15 Q. When you would communicate with him, would you do
16 that in Polish or in English?

17 A. Both languages is okay.

18 Q. Okay. Did he have a preference, though, that he
19 was more comfortable with talking to you in Polish?

20 A. Yes, sir.

21 Q. Now after listening to what his complaints were and
22 taking that history that you did from him, did you
23 then, on that occasion, have an opportunity to
24 perform a physical examination on him?

25 A. Yes, sir.

1 Q. And what did that consist of and what were your
2 findings?

3 A. He has problem moving his neck. He has difficulty
4 look up to the ceiling, down to the floor, over the
5 right and left shoulder. Means that his neck was
6 completely stiff. There was tenderness over
7 posterior neck and there was a scar after
8 torticollis, which he has as a small baby.

9 Shoulders show okay.

10 Elbow, wrist, diminished sensation in ulnar
11 nerve distribution on the left side, weakness of
12 the left hand.

13 Tenderness over the left sciatic nerve,
14 sciatic notch. Straight leg raising, sixty degree,
15 Lasegue is positive, L-a-s-e-q-u-e (sic). Hip
16 range of motion, restricted by back pain.

17 Diminished sensation L4-L5 on the left side,
18 absent left ankle reflex.

19 Diminished foot evertors extensor hallucis
20 longus on the left side.

21 Tenderness over the left ribs in mid axillary
22 posterior axillary line over six to eight ribs,
23 tenderness over the sternum.

24 Q. After performing that physical examination on Mr.
25 Waskowski, did you arrive at an impression as to

1 what his condition was?

2 A. Yes, sir.

3 Q. And would you tell the members of the Jury what
4 that was?

5 A. Status post motor vehicle accident, herniated disc
6 L4-L5, ruptured disc, cervical spine, probably
7 C4-C5. Fracture left ribs six to eight on the left
8 side. Possible fractured sternum. Head injury,
9 Contusion of the neck, back and chest.

10 Q. Okay. Now, Doctor, before moving on, the documents
11 that you're holding in your hand, which I've had
12 marked as Deposition Exhibit Number 2, are those
13 copies of reports that you have been writing since
14 the first time that you saw Mr. Waskowski?

15 A. This was a letter sent to the chart, insurance
16 company and family physician, State Farm Insurance
17 Company on January 13, 2010.

18 Q. Okay. So State Farm would have received copies of
19 those documents that you authored, correct?

20 MR. HEWSON: Objection, foundation.

21 THE WITNESS: State Farm Insurance Company,
22 claim number 22B0777749.

23 BY MR. TEMROWSKI:

24 Q. Okay. I'll take that back. Thank you.

25 Now, Doctor, after seeing Mr. Waskowski on

1 that first occasion, did you write any
2 prescriptions for him to attend physical therapy?

3 A. Yes, sir.

4 Q. Okay. I have had what is marked as Deposition
5 Exhibit Number 3 a document that I'll show you and
6 ask if you could identify what that is?

7 A. Waskowski, and this was continue -- continue
8 physical therapy for six weeks, neck, back,
9 shoulder. Diagnosis, pain. My signature.

10 Q. Okay. And, Doctor, you authored numerous
11 prescriptions like that for physical therapy, is
12 that correct?

13 A. That's correct.

14 Q. And could you just tell the members of the Jury why
15 -- why did you recommend that Mr. Waskowski undergo
16 physical therapy?

17 A. Physical therapy's one of the modality to treat a
18 patient. Patient who suffer injury have
19 irreversible changes which are going to stay with
20 him to the rest of his life. Physical therapy keep
21 a mobility which prevent stiffness, as stiffness
22 produce increased pain.

23 If we have physical therapy, at least we keep
24 mobility and hope that diminish pain.

25 Q. Okay. Now, Doctor, in addition to writing a

1 prescription for physical therapy, did you also
2 write a prescription for Mr. Waskowski to undergo
3 MRI testing?

4 A. Yes, sir.

5 Q. And, first of all, could you please tell all of us
6 what exactly is an MRI?

7 A. Medicine devolve as the medicine about 1860, 1870
8 in England. At the time treatment consist of good
9 advice, some medication, usually opium and alcohol,
10 some vegetable drops, because we didn't know much,
11 and we didn't know how to open the body.

12 Then we get the Second -- First World War when
13 we start doing the surgery for fracture and we find
14 out that we can open the human body and start
15 getting -- fixing it. This was a big progress of
16 forward.

17 Then came a Second World War, more surgery,
18 and after Second World War in United States came
19 into the power was the scientific (phonetic)
20 development, and this was at first x-ray, then
21 there CAT scan, and after CAT scan came a
22 investigation which is not producing any side
23 effect.

24 X-ray -- to obtain x-ray of the spine, chest
25 or x-ray after accident give radiation almost as

1 much as you can get from the atom bomb, and then we
2 try to find out something less.

3 CAT scan was more precise but still more
4 radiation, which if you take few chest radiation --
5 few chest x-ray, you equal almost to twenty to
6 forty units of radiation. If you take a regular
7 spine x-ray, which demand more radiation, you get
8 up to hundred units, which is almost what people
9 get in Hiroshima, and then get in England guy who
10 say why don't we try with a magnetic resonance
11 going to the human body devolving angulating at the
12 separate atom of the human body and get pick up by
13 another electromagnet through the computer on the
14 screen which produce absolutely exact image on the
15 human body, which did not produce any radiation, no
16 side effect, and this investigation came into full
17 blown about fifteen, twelve years ago, and we are
18 using this as the diagnostic tool to verify our
19 suspicion based on our discussion with the patient
20 and manual examination.

21 Q. Now, Doctor, when you write a prescription like you
22 did for Mr. Waskowski to undergo MRI testing, you
23 don't do MRIs at your office?

24 A. No.

25 Q. Okay. And they're done at either a hospital or an

1 MRI facility, is that right?

2 A. Yes.

3 Q. And when you wrote the prescription for Mr.
4 Waskowski to undergo MRI testing, did you recommend
5 any particular facility, or did you simply give him
6 the script to have the MRI done and have him take
7 it where he wanted to have it done?

8 A. Whenever he live, patient usually go close to his
9 house or place which is reputable, but I don't
10 care.

11 Q. Okay.

12 A. And I am not involved in this.

13 Q. Okay. Now, I'm going to show you now what I've had
14 marked as Plaintiff's Deposition Exhibit Number 4,
15 hand this to you, and ask if you could please tell
16 the Jury what that package of documents is?

17 A. Macomb MRI, Kirkwood Professional Building,
18 Schoenherr, Suite, Sterling Heights, Michigan,
19 Jaroslaw Waskowski, March 18, 2010. Referring
20 physician, Stefan Glowacki. MRI of the cervical
21 spine. Diagnosis, pain.

22 Q. And, Doctor, did that facility perform an MRI of
23 Mr. Waskowski's neck and back?

24 A. Yes, sir.

25 Q. And did you, as Mr. Waskowski's orthopedic doctor,

1 have an opportunity to review those reports that
2 you're holding right now?

3 A. Yes, sir.

4 Q. And could you please tell the Ladies and Gentlemen
5 of the Jury what the findings were after the MRI
6 was performed on Mr. Waskowski's neck and back?

7 A. C4-C5 --

8 MR. HEWSON: I'm going to object. The
9 exhibits speak for themselves. To the extent
10 they're being quoted from, they have to be quoted
11 from accurately. Subject to that, Doctor, we'll
12 take your answer. Thank you.

13 THE WITNESS: C4-C5, diffuse posterior bulging
14 with more permanent disc material involving the
15 right paracentral foraminal distribution with
16 degree of uncovertebral, u-n-c-o-v-e-r-t-e-b-r-a-l,
17 joint spurring and right foraminal encroachment
18 with central canal stenosis.

19 C5-C6, broad-based disc herniation with
20 bilateral degree encroachment.

21 C6-C7, small posterior disc herniation.

22 Cervical spinal cord demonstrate normal signal
23 and caliber. The craniovertebral junction is not
24 remarkable, without any evidence of cerebellar
25 tonsillar ectopia.

1 Impression, multiple disc herniation, disc
2 bulging.

3 BY MR. TEMROWSKI:

4 Q. Now, Doctor, that was for the neck, correct?

5 A. That's correct.

6 Q. Could you please tell us what the findings were
7 regarding Mr. Waskowski's lumbar spine, his back?

8 A. Normal cervical lordosis is present. There's a
9 degree of curvature, apparent levocurvature versus
10 torticollis of the cervical spine.

11 Waskowski exam date, April 15, 2010, referring
12 physician, Stefan Glowacki, MRI of lumbosacral
13 spine.

14 I see there is five lumbar vertebra, axial
15 image through assume L1 through L5. Levocurvature
16 with sclerosis of the lumbar spine and there's
17 normal lumbar lordosis.

18 Desiccation and loss of a disc L4-L5,
19 L5-S1. Small fatty infiltration.

20 L4-L5, small posterior disc herniation.

21 L5-S1, small broad-based disc herniation.

22 Disc herniation, L4-L5, L5-S1.

23 Q. Now, Doctor, those MRI reports that you're holding,
24 were they signed by a doctor?

25 MR. HEWSON: Objection, foundation. Go ahead.

1 THE WITNESS: Michele M. Keyes, K-e-y-e-s,
2 D.O., radiologist.

3 BY MR. TEMROWSKI:

4 Q. Doctor, those are the written reports of the MRI on
5 Mr. Waskowski of his neck and back, correct?

6 A. That's correct.

7 Q. Now, in addition to those reports, there are also
8 imaging studies, correct, films?

9 A. Yes, sir.

10 Q. And in the case of Mr. Waskowski, in addition to
11 you reviewing those written reports, did you also
12 have an opportunity to personally review the MRI
13 films?

14 A. Yes, I did.

15 Q. And do you have them with you here today?

16 A. Yes, I do.

17 Q. And --

18 MR. HEWSON: I'm going to object as to
19 foundation. Doctor Glowacki did not produce those
20 documents at his discovery dep. Subject to that,
21 Doctor, we'll take your answer.

22 BY MR. TEMROWSKI:

23 Q. And, Doctor, you have those films with you here
24 today?

25 A. Yes, I do.

1 Q. And would you be able to use the shadow box that we
2 have here and show to all of us what those films
3 reveal to you?

4 A. Yes, sir.

5 Q. Okay. Why don't we put those films up.

6 MR. HEWSON: Which films, just for
7 identification?

8 MR. TEMROWSKI: Well, let's start with --
9 let's start -- let's start with the ones of the
10 neck from Macomb MRI, and then we'll move on to the
11 ones of the back. How's that.

12 THE WITNESS: Okay.

13 BY MR. TEMROWSKI:

14 Q. Do we need to go off the record while you get this
15 together?

16 MR. TEMROWSKI: Why don't we go off and let
17 him...

18 THE VIDEO OPERATOR: Time is two (sic)
19 fifty-three twenty-three. We're off the record.

20 (Discussion off the record)

21 THE VIDEO OPERATOR: We are on the record.

22 The corrected time now is one fifty-eight oh seven.

23 BY MR. TEMROWSKI:

24 Q. Okay, Doctor, you've now located the Macomb MRI of
25 the cervical spine in Mr. Waskowski's neck from

1 March 18, 2010, is that correct?

2 A. That's correct.

3 Q. And you've had an opportunity to personally review
4 that film?

5 A. Yes, sir.

6 Q. And, Doctor, could you please show to all of us,
7 what -- what -- what do you see when you look at
8 that film?

9 A. Number one, the spinal cord is round, not flat, and
10 if you look here, there's compression of the spinal
11 cord because it's look more like a triangle. Then
12 you can see instead of round, you have the
13 protrusion of the disc. Less on this side, more on
14 this side, and very little on this side. You can
15 see there is no compression. You see how is it
16 beautiful round, and this is absolutely different
17 is number one.

18 Number two, you have, a -- one, two, three,
19 four, five -- six disc here visible and you don't
20 see any osteophyte formation. You don't see any
21 changes of the bone. You don't see any arthritis
22 of the bone. Why? Because he's seventy years old?
23 No. He's young guy. He doesn't have arthritis.
24 Look, there is not any osteophyte formation, not
25 any sticky bone. This is one actually. One film.

1 This another film. The same. If you look
2 here, look, look, it's flat. Look how the disc is
3 sticking out, and how is good one. I'll show you
4 good one. Look, this is a good one, but look at
5 this one. Look at this one. All of this --
6 (Indicating)

7 MR. HEWSON: I'm going to object as to
8 foundation because the Doctor isn't identifying
9 what level or what structure within that level.
10 Subject to that --

11 THE WITNESS: On transverse film you cannot
12 identify with absolutely certainty level of the
13 disc. You can only identify changes.

14 MR. HEWSON: I'm sorry. You can't identify --

15 THE WITNESS: If you look on -- on your face I
16 can see your eyes, your nose, your -- but I don't
17 know if your nose is crooked or not because I see
18 all -- if I see from a side, I see different.

19 MR. HEWSON: My objection is foundation --

20 THE VIDEO OPERATOR: Doctor, --

21 MR. HEWSON: -- because you're not and can't
22 identify the level at which you are reading the
23 MRI. That's my objection.

24 THE WITNESS: No. I am reading different MRI
25 which is transverse, not longitudinal. On the

1 transverse MRI, if you don't cave on the side,
2 longitudinal micro, you don't know for sure.

3 THE VIDEO OPERATOR: Doctor, your microphone
4 has come off.

5 MR. HEWSON: And that's my objection.

6 THE WITNESS: I will try to make you happy.

7 THE VIDEO OPERATOR: Doctor, --

8 MR. TEMROWSKI: Your -- your microphone you
9 dropped.

10 BY MR. TEMROWSKI:

11 Q. Now, -- now, Doctor, we're still talking about the
12 neck, correct?

13 A. Cervical spine, which is called name neck.

14 Q. Okay.

15 A. And this neck, it's a lateral view, and you start
16 -- because MRI, it's cut every three to five
17 millimeter thickness and going through the human
18 body from right to left or left to right, it all
19 depends, and if you see this is a beginning, you
20 don't see much. You don't see much. You don't see
21 much, and, look, this is in a center and you can
22 see the first, second, third, fourth, fifth, sixth,
23 and you can see the disc sticking here. The normal
24 disc is like this, flat, and if you look here, the
25 disc is thick, a bulging disc, disc, disc.

1 If you look here, you can see the sticking
2 like a finger over there. This is a normal disc.
3 Look, it's flat, congenital, beautiful and there is
4 white, and if you look here, there is no disc
5 material. It's flat. And, look, and this happen
6 one, two, three, four, five, six vertebra, and this
7 I can tell you the level of the changes.

8 This is the same, different electromagnetic
9 field on the same human body from the beginning to
10 the end. You start from one left side, you see the
11 muscle, you see the beginning of the bone,
12 beginning of the bone, building up, and you can see
13 the bone, you can see the bone, you can see the
14 bone, you can see the bone.

15 And on this one, you don't see any osteophyte
16 formation. You don't see any bony changes in the
17 structure secondary to the fracture congenital
18 abnormality or distraction due to the aging
19 process, which we call degenerative process, and
20 you can see the disc, one, two, three, on three
21 level. You wan't level exactly the name, one, two,
22 three, four five, five six, three four, four five,
23 five six.

24 Q. Okay. And after, Doctor, you reviewed those films
25 and the reports that were prepared at Macomb MRI,

1 were they consistent?

2 MR. HEWSON: I'm going to object as to
3 foundation. Go ahead, sir.

4 THE WITNESS: Sir, I don't --

5 MR. TEMROWSKI: Here. I got the...

6 BY MR. TEMROWSKI:

7 Q. Are we moving now to the lumbar?

8 A. Excuse me, sir.

9 Q. Okay.

10 A. Yes, sir.

11 Q. They were consistent?

12 MR. HEWSON: Objection, leading.

13 THE WITNESS: This is lumbar films but date
14 March 15, 2010.

15 BY MR. TEMROWSKI:

16 Q. Okay. So now we're talking about the lumbar spine?

17 A. That's correct.

18 Q. Okay. And what did you observe after you reviewed
19 the M --

20 A. And if you look in the lateral view, which
21 facilitate transverse view, which was count and
22 numbered here, and if you look this, L5-S1, there's
23 a large disc and there is L4-L5 a smaller disc.
24 You can see it sticking out. You don't see the
25 bony protrusion on any level, none, zero. There is

1 no osteophyte formation, not any arthritic changes.

2 Why? He's young. He's well bred, good general

3 condition. Of course he's Polish, immigrant.

4 And on the lateral view you can see how the
5 nerve is visible. This is spinal cord to nerve
6 going down. There's no arthritic changes, and look
7 what has happened here, that you see the age of the
8 bone and you see the small stuff below the age of
9 the bone. It's not a bony structure. It's soft
10 structure, and it means that this is a disc, and
11 you can see disc here, you can see disc here. Look
12 at disc here. The spinal cord almost disappeared.

13 (Indicating)

14 MR. HEWSON: I'm going to object for the same
15 reason that there's no foundation for the
16 identification of the levels on those alleged MRIs.
17 Subject to that, we have your answer, sir.

18 BY MR. TEMROWSKI:

19 Q. Doctor, after you --

20 A. This is -- wait, wait, wait.

21 Q. After you reviewed the written reports from Macomb
22 MRI and reviewed the actual films of the neck and
23 back, were the two consistent?

24 MR. HEWSON: I'm going to object to
25 foundation. Go ahead.

1 BY MR. TEMROWSKI:

2 Q. Were the reports and the findings as indicated on
3 this the same as what you found when you reviewed
4 the MRI films?

5 A. Yes, sir.

6 Q. Okay. Now, Doctor, I'm now going to hand you what
7 I've had marked as Deposition Exhibit Number 6, and
8 I'll show it to you, which is another set of MRI
9 reports, but this time from Oakland MRI, and ask if
10 you could identify those documents.

11 A. Rochester Road, Troy, Michigan, by Doctor Zamorano,
12 ordered on the date of March 24, 2011.

13 Q. And, again, is that an MRI that was done of Mr.
14 Waskowski's neck and back but at a different MRI
15 facility?

16 A. Different doctor, different MRI, different doctor
17 read it. Completely different establishment.

18 Q. And --

19 A. This is University establishment, this other one
20 was a small hospital, South Macomb. This is
21 probably William Beaumont Hospital.

22 Q. And, Doctor, could you please tell us after
23 reviewing those MRIs, what were the findings?

24 A. C3-C4 midline herniation of a disc effacing --
25 effac -- e-f-f-a-c-i-n-g, the ventral subarachnoid

1 space, without cord compression.

2 C4-C5, midline bilateral herniation of the
3 disc with narrowing of C5 neural foramina
4 bilaterally.

5 C5-C6 --

6 MR. HEWSON: I'm going to object --

7 THE WITNESS: -- demonstrate mild --

8 MR. HEWSON: I'm going to object because the
9 Doctor is not reading the entire finding on the
10 MRI. He's taking it out of context. I object to
11 the foundation. Subject to that, Doctor, we'll
12 continue to take your answer.

13 THE WITNESS: MRI of cervical spine without
14 contrast. History, patient complain severe neck
15 pain, left shoulder pain, headaches since motor
16 vehicle accident.

17 Comment, routine MRI examination of the
18 cervical spine was performed without contrast in
19 sagittal and axial plane using T1, T2 and
20 S-t-i-r imaging sequences including MRI myelography
21 of the cervical spine.

22 Current examination is compared with previous
23 report of MRI from Macomb MRI Center performed on
24 March 18, 2020 -- 2010.

25 There's normal height of vertebral body with

1 preservation of normal alignment, no arthritis.

2 There is straightening of normal cervical
3 lordosis and mild narrowing disc space C4-C5,
4 C3-C4 to C6-C7.

5 Diffuse dehydration of disc material, no
6 arthritis.

7 Cerebral craniovertebral junction,
8 atlantoaxial junction, cervicomedullary junction
9 normal. No arthritis. No degenerative changes.

10 C2-C3 normal, demonstrate no abnormality.

11 Bilateral C3 neural foramina widely patent, no
12 arthritis.

13 C3-C4 level demonstrate mild midline
14 herniation of a disc, the ventral sub --
15 subarachnoid space without cord compression.

16 Bilateral C4 neural -- neural foramina widely
17 patent, no arthritis.

18 C4-C5 level demonstrate diffuse midline,
19 bilateral herniation of a disc with narrowing of C5
20 neural foramina bilaterally. There is only
21 effacement of ventral subarachnoid space by the
22 herniated disc without obvious cord compression.
23 No degenerative changes, no arthritis.

24 C5-C6 demonstrate mild midline herniation of
25 the disc, bilateral C6 neural foramina are widely

1 patent. There's ventral subarachnoid space without
2 cord compression.

3 C6-C7 demonstrate mild disc herniations, no
4 disc compression. Level demonstrate no
5 abnormality.

6 Myelographic demonstrate mild ventral
7 extradural impression, C4-5, disc space level due
8 to disc herniation without cord compression,
9 without ventral subarachnoid space.

10 Spinal cord morphology normal.

11 Facet joint are well aligned bilaterally.

12 Impression, midline disc herniation C3-C4 to
13 C6-C7 without cord compression with only ventral
14 subarachnoid space.

15 Bilateral narrowing, C5.

16 This -- this report of a current MRI of
17 cervical spine significantly different when
18 compared with the previous. There is no bulging of
19 the disc C2-C3 level or spinal cord stenosis C4-C5
20 level in the previous report reported.

21 Previously described bilateral foraminal
22 stenosis, narrowing is not confirm in current exam
23 except bilateral C5 neural foramina.

24 Plain film of cervical spine.

25 There's normal height of the vertebral body

1 with preservation, normal alignment and essentially
2 normal cervical lordosis.

3 Posterior elements are intact. Spinal canal
4 adequate. Prevertebral tissue unremarkable. No
5 cervical rib.

6 Oblique view demonstrate narrowing L5 -- no --
7 C5 neural foramen. Narrowing C5. Remaining neural
8 foraminal are widely patent.

9 Essentially normal -- oh, no. This is lumbar
10 spine.

11 BY MR. TEMROWSKI:

12 Q. Does that cover the cervical spine?

13 A. Yes, sir.

14 Q. Okay. Now, regarding the lumbar spine, the back,
15 could you --

16 A. Yes, sir.

17 Q. -- please tell us what the findings were of the MRI
18 that was performed at Oakland MRI.

19 A. In Oakland MRI on request of Doctor Zamorano, study
20 March 24, 2011.

21 L5-S1 demonstrated midline herniation of the
22 disc slightly more eccentric to left than to the
23 right. Anteriorinferior aspect of the left L5
24 neural foramen. Herniated disc thirty-three
25 millimeters. It's three centimeters big.

1 Thirty-three millimeter, three centimeter big.

2 In transverse shows five millimeters, five
3 millimeters thirty-three is big. It's half
4 centimeter thick.

5 There's no spinal stenosis. There's no
6 abutment. There is not any obvious other changes.

7 There's present disc herniation L5-S1. MRI
8 myelography shows minimal extradural impression
9 L5-S1. Rest of the disc spine is unremarkable.

10 Q. Now, Doctor, in addition to the written reports
11 from the MRIs that were done at Oakland MRI, do you
12 also have the films from Oakland MRI?

13 A. Yes, sir, I do.

14 Q. And you have them with you here today?

15 A. Yes, I do.

16 Q. And did you, Doctor, personally have an opportunity
17 to review those?

18 A. Yes, I do.

19 Q. And after reviewing the films -- and I don't think
20 we'll put them up because we've seen the other
21 ones, but I'll just ask you, after reviewing the
22 films from Oakland MRI personally, and after
23 reviewing the report, did they show the same thing?

24 A. Yes, sir.

25 Q. Now, Doctor, you're an orthopedic doctor?

1 A. We have MRI of the shoulder.

2 Q. Okay. Let's talk about that.

3 A. Partial thickness tear of the distal rotator cuff
4 tendon detailed on prior. Demonstrate in the
5 series five and nine image with rotator cuff tendon
6 tear.

7 Q. And would you please explain to us as an orthopedic
8 doctor what is a rotator cuff tear?

9 A. Human body is made of very complicated pieces. If
10 you believe like your eye in the God, which means
11 God did excellent job, if you are Atheist, nature
12 make this. The pieces which are connect end of the
13 bone, in this case clav -- scapular with the
14 humerus is surround by the muscle which each have
15 different function.

16 One of the small muscle which they think is
17 not important is absolutely important because it
18 prevent sliding of the head of the humerus over the
19 scapula, and if the muscle big, which we call
20 deltoid, start lifting, the first thing which they
21 do, they lift the shoulder up, not angulate but
22 lift it up and by lifting up, produce that shoulder
23 is unable to lift about forty-five, sixty degree.

24 Q. So --

25 A. And we call it torn rotator cuff.

1 Q. So, Doctor, is that a normal or an abnormal finding
2 on that MRI?

3 A. Abnormal.

4 MR. HEWSON: Objection, relevance. Go ahead.

5 THE WITNESS: Abnormal.

6 BY MR. TEMROWSKI:

7 Q. Okay. Now, Doctor, you have testified that
8 regarding Mr. Waskowski you have reviewed the MRIs
9 of his neck and back from Macomb MRI, you've
10 testified that you reviewed the films from Macomb
11 MRI of the neck and back.

12 A. Yeah.

13 Q. You also reviewed the reports from Oakland MRI of
14 the neck and back, and you reviewed the films from
15 Oakland MRI of the neck and back, and now you've
16 talked also about his left shoulder.

17 Here's my question to you. After doing all of
18 that, Doctor, personally reviewing the films, in
19 your professional medical opinion, are the findings
20 that you saw when you reviewed the films traumatic
21 in nature and caused by trauma or are they
22 degenerative?

23 MR. HEWSON: Objection, foundation. Go ahead,
24 please.

25 THE WITNESS: Absolutely traumatic.

1 BY MR. TEMROWSKI:

2 Q. Okay. And explain, please, to the Ladies and
3 Gentlemen of the Jury, Doctor, why they are not, in
4 your opinion, degenerative?

5 A. Number one, whoever made the human being made it
6 lasting. If we take good care and don't have any
7 accident, we can last to eighty, ninety years, some
8 of them to hundred years. It means that the pieces
9 which join bones and pieces of the body hold
10 together in spite of the passing time.

11 If we have an amount of trauma, which we call
12 injury, applied to the particular piece of the
13 human body, this force apply to the soft tissue
14 produce damage. Small damage, you have bleeding,
15 you have hematoma, you have blue discoloration of
16 the skin, but the skin and the tissue regenerate.
17 You apply more force, you rupture it. Some of the
18 tissue if you break the bone, a bone regenerate,
19 you don't see that bone was broken, but if you
20 rupture the ligament of the ankle, ligament of the
21 knee, it will never heal. You will have certain
22 stability, but it will never heal.

23 The same happened to the connection between
24 vertebra, what we call it, a disc surrounded by the
25 capsule and the capsule is made of about five to

1 ten million layers of protein which are interwoven
2 to be elastic and strong enough from pushing the
3 disc, which is made ninety-eight to ninety-nine
4 percent of water and one to two percent of protein.
5 And if it's ruptured, it never regenerate because
6 there's no possible scar tissue to make it two
7 million layers.

8 Because of this, the hole is staying with you.
9 The disc is made of water, practically speaking,
10 and water, with the passing time, if you don't do
11 movement, dry out. When the water dry out, one
12 percent of the protein do not compromise the nerve
13 root. You start moving because you feel better,
14 you (indicating) absorb water from surrounding
15 tissue from the physiologic fluid and disc start
16 swelling, swelling, swelling, swelling, swelling,
17 and is using the hole which was done by the injury
18 and pinching nerve again, and this is repeating and
19 repeating and repeating and repeating.

20 We try to find a better solution by doing the
21 surgery. We start with simple surgery, removing
22 the disc, but it -- they didn't do good because the
23 scar tissue to cover and compromise nerve again.

24 Then we say, oh, we will do the fusion. It
25 means they will use rods, we will use some other

1 material to stabilize that the spine will not move.

2 MR. HEWSON: I'm going to need to object to
3 the narrative. I'd like question and answer so I
4 can object, if we could do that, please. I think
5 that the narrative has gone beyond the scope of the
6 question. I'd like questions and answers. Thank
7 you very much.

8 MR. TEMROWSKI: Well, he was giving an answer
9 to the question that I asked.

10 MR. HEWSON: Then I apologize. I got lost.
11 If we could do just questions and answers, then I
12 think, you know, we have a better opportunity of
13 explaining what's going on.

14 BY MR. TEMROWSKI:

15 Q. Doctor, --

16 MR. HEWSON: Thank you.

17 BY MR. TEMROWSKI:

18 Q. -- very briefly, you've got a model. Could you
19 just show to the Ladies and Gentlemen of the Jury
20 using that model what a herniated disc is?

21 A. If you look here on the right side is round. On
22 the left side is bulging, and this is what is disc.
23 It start from bulging and to the pure herniation.
24 This is all only degree of damage which was done by
25 apply force to the spine.

1 Q. Doctor, it's my understanding that you also wrote a
2 prescription for Mr. Waskowski to undergo a bone
3 scan, is that correct?

4 A. That's correct.

5 Q. And I'm going to show you what I've had marked as
6 Deposition Exhibit Number 6, ask you to look at it
7 and tell the Jury what that is.

8 A. Beaumont Hospital, outpatient services, Waskowski,
9 Jaroslaw, age forty-six, outpatient, date of bone
10 scan, January 25, 2010. Do I have to read all?

11 MR. HEWSON: I haven't objected. Go ahead.

12 BY MR. TEMROWSKI:

13 Q. Well, --

14 A. The patient is forty-six years old male who is
15 complain of pain in the left shoulder, left lateral
16 ribs and also low back pain since motor vehicle
17 accident, December 23, 2009.

18 Follow intravenous administration of a
19 radioactive material, anterior, posterior whole
20 body scan were performed with oblique, ribs, lumbar
21 spine, blah, blah, blah.

22 Findings on the whole body view, there's
23 subtle, s-u-b-t-l-e, punctured -- punctured -- no
24 -- p-u-n-c-t-a-t-e focus in the area slightly
25 superior to TMJ, temporomandibular joint. There is

1 mild tracer activity in the left sternoclavicular
2 joint, it's clavicle, collarbone, superior aspect
3 of the sternomanubrium, which is sternum, which is
4 the front of the chest and sternal angle. That's
5 below, which may represent normal variation versus
6 arthritic changes. The subtle trace activity of
7 patellar region of bilateral knee may represent
8 minimal arthritic changes. Subtle focus, L4-L5,
9 represent normal variation. Focal strain spinous
10 process of L4. Mild uptake in the cervical spine
11 likely represent degenerative changes.

12 That's it.

13 Q. In layperson's terms, after you reviewed that, what
14 does that indicate to you?

15 A. Indicate that some force was applied to the
16 particular part of human body producing
17 regeneration by increasing vascularity and blood
18 supply.

19 Q. Okay. Doctor, today's date is November 14th, 2012.
20 Are you still treating Mr. Waskowski for injuries
21 from the automobile accident of December 23rd,
22 2009?

23 A. Yes, sir.

24 Q. And it's my understanding that since you began
25 treating Mr. Waskowski, that you have been

1 disabling him, is that correct?

2 A. That's correct.

3 Q. And have you, since you started treating Mr.
4 Waskowski, signed and authored disability
5 certificates?

6 A. Yes, sir.

7 Q. I'm going to now show you what I've had marked as
8 Deposition Exhibit Number 7, hand that to you, and
9 please tell the Jury what that is.

10 A. My name, address, date, name of a patient, which
11 was under my care from a date, what for, and it was
12 my professional care and was totally
13 incapacitated, not able to work, continue off work,
14 partially incapacitate from April 2012 to May 18,
15 '12. Needs domestic help, attendant care care,
16 with case management as before.

17 Signature. Sent to State Farm, claim number 1
18 -- 22B0777749, fax, 888-845-8680 Terri Page.
19 Deposition exhibit.

20 Q. And, Doctor, since you began treating Mr.
21 Waskowski, have you been preparing and signing
22 disability certificates such as that?

23 A. That's correct, sir.

24 Q. Have you disabled Mr. Waskowski from work?

25 A. Yes, sir.

1 Q. Have you prescribed for Mr. Waskowski household
2 assistance?

3 A. Yes, sir.

4 Q. Have you prescribed for Mr. Waskowski attendant
5 care?

6 A. Yes, sir.

7 Q. And did you prescribe twelve hours a day attendant
8 care?

9 MR. HEWSON: Objection, leading. Go ahead.

10 BY MR. TEMROWSKI:

11 Q. Okay. Doctor, how many hours a day attendant care
12 did you prescribe for Mr. Waskowski?

13 A. Sorry. I don't remember, because I didn't -- no.
14 No. No. I did not wrote it here, and I don't
15 remember.

16 Q. Well, could you take a look at your file. Let's
17 see.

18 A. This is yours. Excuse me, sir.

19 Q. Okay. Here. I'll actually show you the other
20 exhibit, the first report that you authored.

21 A. I suggested treatment would like to see x-ray with
22 body performed William Beaumont. X-ray did not
23 show anything. Condition will not improve. I
24 would like to order MRI. I will order physical
25 therapy three times a week and will see how he

1 will do. He should continue pain medication, but
2 he's not able to work. He need domestic
3 help/attendant care, twelve hours a day, seven
4 days a week.

5 Q. Okay. And you've continued that prescription?

6 A. That's correct, sir.

7 Q. Doctor, I'm now going to show you what I've had
8 marked as Exhibit Number 8, and ask if you could
9 identify that document?

10 A. Rochester Knee and Sports Medicine, P.C., December
11 14, 2010.

12 MR. HEWSON: Objection, hearsay. Go ahead.

13 THE WITNESS: Jaroslaw Waskowski, automobile
14 collision December 23, 2009.

15 Review documentation. Rochester Knee, spine,
16 MRI, chief complaint cervical, lumbar pain, left
17 shoulder pain, left lower extremity pain.

18 BY MR. TEMROWSKI:

19 Q. Okay. And who signed that report, Doctor?

20 MR. HEWSON: Objection, foundation. Go ahead.

21 THE WITNESS: Michael Donahue, D-o-n-a-h-u-e.

22 BY MR. TEMROWSKI:

23 Q. And he's a physician?

24 MR. HEWSON: Objection, foundation.

25 THE WITNESS: He is D.O.

1 MR. HEWSON: Go ahead.

2 BY MR. TEMROWSKI:

3 Q. And have you had an opportunity to review that
4 report?

5 A. I probably, yes.

6 Q. Okay. And do you agree with the conclusions and
7 findings that Doctor Donahue reached?

8 A. Yes, sir.

9 MR. HEWSON: Objection -- objection,
10 foundation, relevance. Go ahead.

11 BY MR. TEMROWSKI:

12 Q. Okay. Thank you. And, Doctor, I'm now going to
13 show you what I've had marked as Exhibit Number 9,
14 hand you that and ask if you could tell the Jury
15 what that is.

16 A. Accommodation of home modification. Sign
17 10-15-2012.

18 MR. HEWSON: I'm going to object. That isn't
19 listed on the final pretrial report as an element
20 of damage in this case. Subject to that, Doctor,
21 we'll take your answer. Thank you.

22 BY MR. TEMROWSKI:

23 Q. And, Doctor, is that a prescription that you
24 recently wrote for Mr. Waskowski for home
25 modifications?

1 A. Yes, sir.

2 Q. And given the nature and extent of his injuries, is
3 it your professional opinion that because of those
4 injuries, he would need home modifications?

5 MR. HEWSON: Objection, leading.

6 THE WITNESS: Yes, sir.

7 MR. HEWSON: Foundation. Go ahead.

8 BY MR. TEMROWSKI:

9 Q. Okay. Thank you.

10 And I'm happy to say, Doctor, the last exhibit
11 I have is number ten, which I will hand you, and
12 ask if you could identify what that is.

13 A. I am crazy because I do charity job for three
14 years.

15 MR. HEWSON: I'm going to move to strike that
16 comment as not responsive to any question before
17 the Doctor. Thank you, sir. Go ahead.

18 BY MR. TEMROWSKI:

19 Q. What -- what is that document, Doctor?

20 A. Unpaid bills.

21 Q. Okay. And you indicated previously that you are
22 still treating Mr. Waskowski for his injuries from
23 the automobile collision, correct?

24 MR. HEWSON: Objection, leading. Go ahead.

25 THE WITNESS: I should stop long time ago.

1 BY MR. TEMROWSKI:

2 Q. Okay. And does Mr. Waskowski have an outstanding
3 bill with you?

4 A. Yes, three and a half thousand dollars.

5 Q. Okay. And have your bills, since you've been
6 treating Mr. Waskowski, been submitted for payment
7 to State Farm?

8 A. Yes, sir.

9 Q. And your most recent bill, which is the top one on
10 that stack of bills, --

11 A. Yes.

12 Q. -- has that bill been submitted for payment to
13 State Farm?

14 A. Yes, sir.

15 Q. And has it been paid?

16 A. No.

17 Q. Okay. And just so we're clear, the amount is three
18 thousand four hundred and fifty dollars, is that
19 correct?

20 A. That's correct.

21 Q. Okay.

22 A. I wish to know any lawyer who will do it for
23 free.

24 MR. HEWSON: Move to strike. Wait for a
25 question, please, sir.

1 BY MR. TEMROWSKI:

2 Q. Doctor, in your professional medical opinion as a
3 medical doctor and as an orthopedic doctor, was Mr.
4 Waskowski injured in the automobile collision of
5 December 23rd, 2009?

6 MR. HEWSON: Objection, foundation. Go ahead.

7 THE WITNESS: Yes.

8 BY MR. TEMROWSKI:

9 Q. And would you please tell the members of the Jury
10 what injuries, in your opinion, Mr. Waskowski
11 suffered in that automobile collision?

12 A. The most important, post traumatic stress syndrome.
13 He's not the same. He's getting depression. He
14 cannot sleep. He cannot function. He change
15 personality. He has problem with memory. He has
16 problem with relation with people.

17 On top of that, he has physical damage to his
18 neck and his back, his left shoulder.

19 Unfortunately, we tried to help him as much as we
20 can with physical therapy, medication, which not
21 doing too much. He doesn't want the surgery, then
22 he's going to stay like this to the rest of his
23 life.

24 MR. HEWSON: Move to strike, foundation.

25 ~~THE WITNESS: There is only one thing good.~~

1 ~~that human brain get adapted to the distressful~~
2 ~~situation. This is when people survive Auschwitz~~
3 ~~Concentration Camp because they get adapted. The~~
4 ~~same, the human body get adapted to the pain and to~~
5 ~~the damage to his body~~

6 MR. HEWSON: I'm going to move to strike any
7 reference to concentration camps in comparing it to
8 this accident. It has no foundation. Subject to
9 that, Doctor, we have your answer. Thank you, sir.

10 BY MR. TEMROWSKI:

11 Q. Doctor, in your professional medical opinion, were
12 the medical services that you provided to Mr.
13 Waskowski reasonably necessary for his care,
14 recovery and rehabilitation from injuries that he
15 sustained in the automobile accident of December
16 23rd, 2009?

17 MR. HEWSON: Objection, calls for a legal
18 conclusion.

19 THE WITNESS: Yes, sir.

20 BY MR. TEMROWSKI:

21 Q. Doctor, in your professional medical opinion as an
22 orthopedic doctor, and given the fact that you
23 prescribed physical therapy for Mr. Waskowski, was
24 physical therapy reasonably necessary for his care,
25 recovery and rehabilitation from injuries from the

1 automobile accident of December 23rd, 2009?

2 MR. HEWSON: Objection, foundation. Go ahead,
3 please.

4 THE WITNESS: Yes, I do.

5 BY MR. TEMROWSKI:

6 Q. Doctor, in your professional medical opinion as an
7 orthopedic doctor, you prescribed household
8 assistance for Mr. Waskowski. Was that service
9 reasonably necessary for Mr. Waskowski's care,
10 recovery and rehabilitation because of injuries
11 that he sustained in the automobile collision of
12 December 23rd, 2009?

13 MR. HEWSON: Objection, foundation. Go ahead,
14 please.

15 THE WITNESS: Yes, I do.

16 BY MR. TEMROWSKI:

17 Q. Doctor, in your professional medical opinion as an
18 orthopedic doctor, you prescribed attendant care
19 for Mr. Waskowski. Was attendant care reasonably
20 necessary for Mr. Waskowski's care, recovery and
21 rehabilitation because of injuries that he
22 sustained in the automobile collision of December
23 23rd, 2009?

24 MR. HEWSON: Objection, foundation. Go ahead.

25 THE WITNESS: Yes, I do.

1 BY MR. TEMROWSKI:

2 Q. Doctor, in your professional opinion, will Mr.
3 Waskowski, because of the injuries that he suffered
4 in the December 23rd, 2009 motor vehicle collision,
5 will he recover -- will he require future medical
6 care and treatment for those injuries?

7 MR. HEWSON: Objection, relevance. Future
8 benefits are not part of this case. Subject to
9 that, Doctor, we'll take your answer.

10 THE WITNESS: Unfortunately he's going to
11 suffer to the rest of his life.

12 MR. TEMROWSKI: Doctor, I'd like to thank you
13 for your time. I have no other questions.

14 MR. HEWSON: Let's take a break and then I'll
15 Cross-Examine. Thank you.

16 THE VIDEO OPERATOR: Time is two forty
17 fifty-three. We're off the record.

18 (Recess taken at 2:40 p.m.
19 until 2:48 p.m.)

20 THE VIDEO OPERATOR: We are beginning disc
21 two. Time is two forty-eight fifty.

22 MR. HEWSON: Thank you.

23 EXAMINATION

24 BY MR. HEWSON:

25 Q. Doctor, I wanted to ask you some questions about

1 your Curriculum Vitae, which I believe is Exhibit 1
2 from the deposition?

3 A. Yes, sir.

4 Q. Do you have that there with you?

5 A. Yes, sir.

6 Q. Now, if I understand correctly, the last time that
7 you had hospital privileges was in 2000, is that
8 correct?

9 A. Around 2002.

10 Q. And the last time -- you couldn't remember when we
11 spoke last time of the last place that you did an
12 orthopedic surgery, am I correct?

13 A. Excuse me?

14 Q. You couldn't remember the last hospital you did an
15 orthopedic surgery?

16 A. Long time ago.

17 Q. Long time ago. And you understand what Board
18 certification is?

19 A. Yes, sir.

20 Q. You are not Board certified in orthopedic
21 surgery, --

22 A. Yes, sir, I am not.

23 Q. -- is that right? And as a matter of fact, on your
24 Curriculum Vitae, you do not list any publications?

25 A. Yes, sir, I did not.

1 Q. And you also on your Curriculum Vitae do not list
2 any of the hospitals you've been affiliated with in
3 Michigan at any time, is that correct?

4 A. That's correct.

5 Q. Now --

6 A. Because I am not, and this is current Curriculum
7 Vitae.

8 Q. Okay. How did Mr. Waskowski come to your practice?

9 A. I'm Polish, he's Polish, probably somebody sent
10 him.

11 Q. Do you know?

12 A. I didn't --

13 Q. Did you ever inquire?

14 A. I never inquire about this.

15 Q. Have you gotten referrals from Mr. Temrowski in the
16 past?

17 A. I wish.

18 Q. You've never gotten -- is it your testimony you've
19 never gotten a referral --

20 A. Maybe I get some, but unfortunately, no.

21 Q. Do you remember Mr. Temrowski ever being involved
22 in depositions with you in the past?

23 A. Oh, probably one or twice a year.

24 Q. Once or twice a year for how many years? For how
25 many years?

1 A. I don't know.

2 Q. More than ten?

3 A. I don't know.

4 Q. More than five?

5 A. Not enough.

6 Q. Not enough. Okay.

7 A. Anyhow, before I charge three hundred dollars, it
8 was not important.

9 Q. Now, I look at your residency on your Curriculum
10 Vitae, and I do not see any residency in
11 neuroradiology or radiology.

12 A. I used to have a neuroradi -- neuro -- neurology in
13 London for a one year, and this was University of
14 London.

15 Q. University of London was -- let's see -- back in
16 1970?

17 A. That's correct.

18 Q. And you did a neurology residency --

19 A. St. Bartholomeus Medical School.

20 Q. You did a --

21 A. And the time the teacher was Mr. O'Connor who was a
22 sir nominated by the queen for his achievement in
23 neurosurgery.

24 Q. You didn't become a neurosurgeon, did you?

25 A. They want me, but I didn't like it.

1 Q. Okay. My question was whether or not you have any
2 training in neuroradiology?

3 A. About thirty or forty meetings in the Academy of
4 Orthopedic Surgery when I attend all, everything
5 about the radiology, because MRI came into the new
6 view, I want to learn how to do it, what to do it.
7 I even went to England to see how it worked, but
8 this is not a passion. This was my, I would say
9 hobby.

10 Q. Nothing -- none of those seminars or any of that
11 training is listed on your Curriculum Vitae, is it?

12 A. No.

13 Q. Now, what is a diagnosis?

14 A. This is what you suspect that is wrong with another
15 human being.

16 Q. And am I correct that you use the history that's
17 given to you combined with the physical findings
18 and any objective testing to arrive at a diagnosis,
19 correct?

20 A. That's correct.

21 Q. And you would not arrive at a diagnosis without a
22 physical finding that supported that diagnosis, am
23 I correct in that?

24 A. Not always. You have all physical findings which
25 can support, but base on the behavior, complaints

1 and the history, you build in your mind suspicion
2 in this or this direction. There are usually two
3 or three, but usually you have to exclude by doing
4 some of the test to verify or throw it out.

5 Q. Your report of January --

6 A. There is no professor or genius in medicine who
7 make a diagnosis by putting the hand. There are
8 of, course, people with golden glass and they look
9 into the glass and they say what is wrong with you,
10 but I don't believe in it.

11 Q. So you want to have physical findings that
12 correlate clinically to some sort of objective
13 basis for a complaint, is that true?

14 A. Yes, sir. I wish. I wish, but not always work
15 this way.

16 Q. All right. Well, let's talk about Mr. Waskowski.

17 A. This is likely to seem like with the low. It's not
18 always the same what you want to have.

19 Q. Well, I'm going to move to strike that as not
20 responsive.

21 Sir, take a look at your report of January the
22 13th, 2010, please.

23 A. Excuse me?

24 Q. January 13th, 2010, your first visit.

25 A. January 13th, 2010.

1 Q. Yes.

2 MR. TEMROWSKI: No. The exhibits are --

3 THE WITNESS: Give me a second.

4 MR. HEWSON: The exhibits are right up there
5 as my brother counsel was pointing out to you.

6 BY MR. HEWSON:

7 Q. You're not suggesting that the exhibits are not
8 accurate, are you, sir?

9 A. Yes, sir.

10 Q. Let me ask you that question again. Are you
11 suggesting that the exhibits that Mr. Temrowski
12 presented to you are not the same as the exhibit --

13 A. No.

14 Q. -- in your lap?

15 A. But I like to look into my papers.

16 Q. All right.

17 A. I'm old guy. I have my old copies.

18 Q. Okay.

19 A. I practice medicine since 1960, before you start
20 practicing law.

21 Q. Yes, sir. Now, did you take a history from Mr.
22 Waskowski as to what his treatment was between
23 December 23rd, 2009, and January the 13th, 2010?
24 Did you take that history?

25 A. In a second, sir. Okay. What is your question?

1 Q. My question is did you take a history from Mr.
2 Waskowski as to what his treatment -- course of
3 treatment was from the date of the accident until
4 the time he first saw you?

5 A. Okay. On January 13, 2009, his weight was full two
6 hundred pounds, two eight, height, six point two,
7 weight -- blood pressure, hundred forty -- hundred
8 fifty over eighty. Forty-six years old, male,
9 complaining of back pain since injury in the car
10 accident on December 13th (sic), 2009.

11 Q. My question is very specific. Did you ask him what
12 treatment he had between the 23rd of December,
13 2009, and the first treatment on January 13th with
14 you?

15 A. If you will be patient enough, I will tell you, but
16 you don't want me, then I cannot answer.

17 Q. You can't answer that? Look at past medical
18 history on the second page of your report, please.

19 A. You ask me a question. If you are gentleman, let
20 me finish.

21 Q. No, sir. Actually --

22 A. Okay.

23 Q. -- I am a gentleman, but it's a yes or no --

24 A. If you are not a gentleman --

25 Q. -- it's a yes or no question.

1 A. Okay.

2 Q. The yes or no question is did you ask Mr. Waskowski
3 for his treatment history from the 23rd of December
4 2009 to January 13th, 2010? Did you ask him that,
5 yes or no?

6 A. I don't remember, sir.

7 Q. If you had asked him that, would you record that in
8 your report?

9 A. I am trying to find out.

10 Q. All right. Then please read it to yourself --

11 A. Thank you very much.

12 Q. -- and then tell us what's in there. Thank you.

13 A. Forty-six years, complaining back pain since injury
14 in the car accident December. Restrained driver
15 stationary on the red light, hit by a car, look
16 front, push, out, blah, blah, blah, lost conscious
17 after accident, next, pick up by daughter home.
18 Next. That's correct, he went to see his doctor,
19 Doctor Nietrzykowski.

20 Q. Yes, sir. Did you ever get Doctor Nietrzykowski's
21 records?

22 A. No, sir.

23 Q. Did you ever ask Doctor Nietrzykowski or William
24 Beaumont Hospital to provide you with the records
25 from the first treatments?

1 A. I ask William Beaumont for x-rays and whatever I
2 can get. I didn't care to ask Doctor
3 Nietrzykowski.

4 Q. Do you know when Doctor Nietrzykowski saw Mr.
5 Waskowski?

6 A. Him -- according to him, his daughter took him to
7 Doctor Nietrzykowski. This is my direct question
8 and his direct answer.

9 Q. My question --

10 A. I didn't ask what time, and I didn't time how many
11 minutes he was over there, and this what I know.

12 Q. Is it --

13 A. Doctor Nietrzykowski, to answer your question, send
14 him for x-ray in William Beaumont Hospital, Twelve
15 Mile and Mound, cervical spine, lumbosacral spine,
16 chest, eighteen x-ray, and he get medication,
17 Vicodin, Robaxin, on medication, less pain, two or
18 four hours.

19 Q. Very good.

20 A. I ask him what Doctor Nietrzykowski -- where did he
21 go, to answer your question, sir.

22 Q. That was my question. Thank you.

23 Do you have the x-rays from William Beaumont
24 Hospital --

25 A. I don't have it.

1 Q. -- in your file?

2 A. Probably I have in one of this, but I don't
3 remember and I don't know.

4 Q. Did you -- you said you asked for those x-rays.
5 Didn't you just say that to me?

6 A. Yes. I probably ask and I think that I asked.

7 Q. Do you remember that those x-rays were normal?

8 A. No, I do not remember what was three years ago,
9 sir.

10 Q. Wouldn't the presence of normal chest x-rays be
11 important to you as a treating physician?

12 A. Not necessarily, because chest x-ray will not show
13 in ninety percent broken ribs and broken sternum.

14 Q. It won't?

15 A. It will not.

16 Q. So if a radiologist from William Beaumont Hospital
17 said that the chest x-rays, films were normal, that
18 doesn't make any difference to you as the treater.
19 Am I right?

20 A. That's correct.

21 Q. Okay. So you send him in for a bone scan?

22 A. That's correct.

23 Q. All right. Now the bone scan comes back and it's
24 normal, right?

25 A. No, it's not.

1 Q. It's not. All right. Well, let's talk about that
2 for a minute.

3 A. Show me the bone scan.

4 MR. TEMROWSKI: You've got the exhibits right
5 there.

6 MR. HEWSON: They're right there.

7 BY MR. HEWSON:

8 Q. Now, you didn't bother --

9 A. Wait a second.

10 MR. TEMROWSKI: Here. I'll pull it out.

11 MR. HEWSON: Thank you.

12 MR. TEMROWSKI: Okay. Here's the bone scan.

13 THE WITNESS: Yes, sir.

14 BY MR. HEWSON:

15 Q. First of all, sir, let me ask you specifics. This
16 bone scan was taken January 25th, 2010, at your
17 request?

18 A. Right after my first visit.

19 Q. Right -- well, actually twelve days after your
20 first visit, right?

21 A. Yes, sir.

22 Q. Okay. Now, this -- the impression that was given
23 by Doctor Feng -- I'm sorry -- Doctor Qing,
24 Q-u-i-n-g (sic) --

25 A. Who?

1 Q. Doctor Qing.

2 A. Yeah, Qing.

3 Q. Okay.

4 A. Yes, Doctor Feng. Qing is his first name. Last
5 name is Feng.

6 Q. Are you sure? Do you know him?

7 A. You know Chinese, right.

8 Q. Sir, I just asked do you know him?

9 A. He's Chinese.

10 Q. Okay.

11 A. Okay.

12 Q. In any event, --

13 A. And in Polish, like in Chinese, first is your first
14 name and second is your last name.

15 Q. Okay. Well, they got a comma in there, but it
16 doesn't matter.

17 A. Okay. Forget it.

18 Q. The impression was there was no evidence of acute
19 fractures involving the left shoulder, ribs or
20 spine, right?

21 A. There is no evidence of acute fracture --

22 Q. Involving the left shoulder --

23 A. -- left shoulder, ribs or spine, yes.

24 Q. Correct. So a bone scan is -- is very sensitive.

25 It's not specific, but it's very sensitive, --

1 A. Yes, sir.

2 Q. -- is that correct? And if there was a fracture,
3 it would show up?

4 A. No.

5 Q. It wouldn't?

6 A. No. It all depends how this guy see about three
7 hundred to five hundred bone scan a day.

8 Q. So you're saying --

9 A. He looks -- looks like this. He doesn't know the
10 patient. He doesn't do anything, and if he's not
11 really big lad, he doesn't show, but in his report
12 -- sorry to interrupt you -- he wrote it that are
13 increased uptake and this for Qing is absolutely
14 normal. It's normal.

15 Q. It's normal for that?

16 A. Absolutely, no.

17 Q. Oh, it's not. Let me just --

18 A. I am bald, I am bald. I am not bald and I am not
19 bald.

20 Q. What you're talking about is there's a line here
21 that says there's mild tracer activity in the left
22 sternoclavicular joint?

23 A. That's correct.

24 Q. And that will be -- that could be from an --

25 A. Injury.

1 Q. -- arthritic -- an arthritic condition?

2 A. No, sir.

3 Q. Wait, wait, wait. You let me finish my question.

4 That very well can be from an arthritic change
5 because that particular joint has been operated for
6 forty-six years during his lifetime, isn't that
7 true?

8 A. He's right-handed.

9 Q. Okay.

10 A. If he's right-handed, if this is arthritic,
11 degenerative changes, it should be in the right
12 joint, not in the left. In the left, he doesn't
13 use left hand. Why he has in the left hand.

14 Q. Sir, let me ask you this. Read the rest of it.

15 A. That's correct. There is mild tracer activity in
16 the left sternoclavicular joint --

17 Q. Superior --

18 A. -- superior aspect of the sternomanubrium. It's in
19 the middle of the chest, far away from this.

20 Q. No, no, no. It's in the middle of the chest by the
21 clavicle, in the middle under the neck. Isn't that
22 where it's anatomically located? Sternomanu --
23 sternomanubrium, sternal angle.

24 A. Read it. Read it. Read it. Read it.

25 Q. I just did.

1 A. And the sternal angle, --

2 Q. Let me ask you this.

3 A. -- which is about four inches below.

4 Q. Which may represent a normal variant versus minimal
5 arthritic changes?

6 A. In his head. He's stupid.

7 Q. The doctor's stupid?

8 A. Yes, absolutely.

9 Q. The doctor? Okay. That's all right. Now, let me
10 just make sure I understand that.

11 A. No, no.

12 Q. Wait. No, no. You just said that this doctor who
13 read this report is stupid.

14 A. Yeah.

15 Q. I want to know, if you believe that he is stupid,
16 when you reported him to William Beaumont Hospital
17 as incompetent?

18 A. Listen --

19 Q. Did you do that? Yes or no?

20 A. No, no. Completely different story.

21 Q. Did do you it, yes or no?

22 A. No. Completely different story.

23 Q. That's all I need to hear.

24 A. No. The problem is if you write on one side that
25 he has uptake on the other side, he writes that is

1 normal. He's stupid.

2 Q. Okay. You just said that. Thank you very much.

3 Now, apparently I would -- let me ask you
4 this. When did you get those films that you looked
5 at today for the Jury?

6 A. What films?

7 Q. The films that you looked at today for the Jury.

8 A. I don't know when I got them. My secretary know.
9 I don't know. Probably when the patient -- I don't
10 know.

11 Q. Do you remember -- do you remember when I deposed
12 you?

13 A. No, I don't remember. You're a nice guy, but --

14 Q. In February of 2012?

15 A. -- unfortunately I don't remember you, sir.

16 Q. Okay. You indicated on page twelve and thirteen
17 when I asked you do you have those films or the
18 discs showing the digital reproductions in your
19 file, and you said no, sir.

20 And I said where would they be.

21 You said it's not my program. It could be the
22 patient has or in a place where the MRI is done. I
23 do not keep films or discs.

24 A. That's correct.

25 Q. That's what you told me. When did you get these?

1 A. I don't know. What do you want? Do you kill me if
2 I don't know.

3 Q. Okay. When was the first time you read them?

4 A. Probably the first time when I saw the patient with
5 -- after the x-ray, after the MRI.

6 Q. And -- and, so, the first time you would have read
7 them if the MRI was March 18th --

8 A. And I gave it back to the patient.

9 Q. And the first MRI was March the 18th, 2010?

10 A. Probably after March, April. I don't know.

11 Q. And can you tell me when the next date was that you
12 saw Mr. Waskowski after March the 18th, 2010?

13 A. I don't know, sir.

14 Q. Pardon?

15 A. I don't remember, sir. I don't know.

16 Q. Can you look in your file and tell me what the next
17 visit was after March 18, 2010?

18 A. Okay. Yes, sir. March 29, April 12.

19 Q. Just March 29 will be the next visit, correct?

20 A. March -- you ask me about a visit, to look in my
21 chart, and I'm reading from my chart.

22 Q. Let me --

23 A. And I saw him March 15, I saw him March 29, I saw
24 him April 12, and I saw him May 10, and June 16,
25 July 16.

1 Q. And the question was when was the next time you saw
2 him after March the 18th, 2010, and your answer --

3 A. After March 18th, I saw him March 29.

4 Q. That's right. Eleven days later, correct?

5 A. That's correct.

6 Q. And that would have been the time that you read the
7 films?

8 A. Probably.

9 Q. Would -- is there any note in your file that tells
10 you that you read them before March --

11 A. No. I wrote it dictated. It means that I have to
12 find the report, which I dictate of this date and
13 look for this. March -- January 13. What date you
14 want to see?

15 Q. What I'm asking is --

16 A. What the date?

17 Q. -- March 29th. Do you have a report from March
18 29th?

19 A. May 10, May 10, April 12. Thank you very much for
20 your letter regarding Mr. Waskowski. Diagnosis
21 verified by MRI shows three herniated disc,
22 cervical spine C4-C5, C5-C6, C6-C7. Anterior
23 diagnose injury are secondary to injury in the car
24 accident as reported on December 23, 2009.

25 Time expectation, it is very difficult to

1 predict. It is too many injuries that it would be
2 called by itself. Herniated disc could hurt two,
3 sometimes three years. If conservative treatment
4 will not help, then he will -- may need a neck
5 surgery at -- he is at the moment. I will
6 eventually order MRI of lumbosacral spine and
7 continue physical therapy.

8 Q. That's your report of March 29th, right?

9 A. That's correct, sir.

10 Q. That's the first reference to the MRI. Am I
11 correct?

12 A. That's correct, sir.

13 Q. Would you take a look at your report of January the
14 13th, 2010?

15 A. January?

16 Q. 13th, 2010, your first report.

17 A. Okay.

18 Q. You got it?

19 A. Yes.

20 Q. You list diagnosis. The first one is status post
21 motor vehicle accident. That's not a diagnosis, is
22 it?

23 A. Yes, to me it is.

24 Q. What -- is there a -- an ICD-9 diagnostic code that
25 goes with status post motor vehicle accident?

1 A. I don't remember, sir.

2 Q. Herniated disc L4-L5.

3 A. Yes, sir.

4 Q. You did not have the MRI findings at that time?

5 A. No.

6 Q. You did not have any objective testing to justify
7 that determination at that time, did you?

8 A. It all depends what you want.

9 Q. Well, no. Did you have any object --

10 A. You mean on disc?

11 Q. Sir, --

12 A. Lumbar spine, restricted range of motion,
13 tenderness over left sciatic nerve and sciatic
14 notch. Straight leg raising sixty degree, Lesegue
15 test positive. His range of motion restricted by
16 pain. Knees on both sides right and equal. Ankles
17 right equally. Diminished sensation L4-L5. L4-L5
18 nerve distribution on the left side.

19 Q. And so that --

20 A. Knee reflexes equal on both sides, absent left
21 ankle reflex. Diminished foot evertors, extensor
22 halllucis longus on the left side. Tenderness over
23 the left ribs, blah, blah, blah.

24 Q. We'll get there in a minute. You're telling --
25 your testimony to the Jury is that because he had

1 tenderness over the left sciatic nerve and left
2 sciatic notch and straight leg raising at sixty
3 degrees and Lessegue's test was positive, that
4 there's a herniated disc at L4-L5?

5 A. No, it's not all. No, it's not all.

6 Q. Fine.

7 A. You are taking part of my sentence.

8 Q. The diminished sensation at L4-L5 nerve
9 distribution on the left side --

10 A. That's correct.

11 Q. And how many --

12 A. Radially -- continue reading. Continue reading.

13 Q. We're going to take things one thing at a time,
14 sir.

15 A. Absent left ankle reflex, diminished foot evertors,
16 extensor hallucis longus on the left side.

17 Q. So why did you -- why did you need a lumbar X --
18 MRI?

19 A. Because I want to verify this.

20 Q. Why? You were certain as of January 2010 --

21 A. I was not certain. I suspect.

22 Q. That's exactly my point. When you made this
23 diagnosis you didn't know, --

24 A. No, no. I knew.

25 Q. -- that's why you ordered an MRI?

1 A. No. I knew -- I knew based on the examination
2 interview that there is something wrong, and my
3 experience, my training indicate that this most
4 likely is a diagnosis herniated disc, and this I
5 have to verify or rule out.

6 Q. How did you treat that herniated disc?

7 A. By pray first.

8 Q. All right.

9 A. Second, antiinflammatory medication, pain
10 medication, physical therapy.

11 Q. What physical therapy is appropriate to treat a
12 herniated disc at L4-L5?

13 A. Whatever it will do.

14 Q. Do you know?

15 A. Active/passive range of motion, ultrasound,
16 diatheramy, there is just now sort of acupuncture
17 when they stick the electrodes to the muscle and
18 they try to stimulate all of them to diminish
19 inflammation. Not always work. Sometimes increase
20 the range of motion.

21 Q. What --

22 A. Problem is that chiropractor, by pulling, hoping
23 that (indicating) disc suck itself in. Sometime
24 work, sometime doesn't.

25 Q. Did Mr. Waskowski get chiropractic treatment?

1 A. I don't remember.

2 Q. What physical therapy was actually performed for
3 him?

4 A. I don't know. I have the report that I can read it
5 if you want.

6 Q. Well, what I'm asking was --

7 A. Would you like to read it?

8 Q. No, sir. Just wait until you hear my question. I
9 want to know what physical therapy you as the
10 orthopedic doctor for Mr. Waskowski wanted
11 performed for this diagnosis of herniated disc
12 L4-L5. What did you want done?

13 A. A EMS of fifteen minutes to back, neck, shoulder
14 and arm. US to LB, one-third centimeters, fifteen
15 minutes. Manual therapy, neck, shoulder, back,
16 including soft tissue mobilization times fifteen
17 minutes. Therapeutic stretching, strengthening,
18 P-R-E bicycle isotonic isometric, MacKenzie two,
19 twice, fifteen minutes, lumbar traction, fifteen
20 minutes, CP to above area.

21 Q. What are you reading from?

22 A. A physical therapy evaluation.

23 Q. Did you ever write down for the physical therapist
24 the therapy you wanted performed for the herniated
25 disc at L4-L5, yes or no?

1 A. Since my graduation and since I start practicing in
2 1960, I never wrote what they supposed to do.

3 Q. What --

4 A. My prescription is examination, evaluation and
5 treatment.

6 Q. Your third diagnosis is ruptured disc, herniated
7 disc C4-C5, as of January of 2010. You didn't have
8 an MRI --

9 A. January 13, 2010.

10 Q. You did not have an MRI to refer to until March the
11 29th of 2010, according to your testimony.

12 A. That's correct.

13 Q. Am I right? Tell me what symptomatology you looked
14 at to tell you there was a herniated disc at C4-C5?

15 A. MRI verify my suspicion.

16 Q. Tell me what you looked at -- what you wrote in
17 your report that led you to the suspicion of
18 herniated disc?

19 A. Tenderness of posterior neck.

20 Q. Tenderness?

21 A. Shoulder abduction, blah, blah, blah, difficult to
22 pull behind, elbow is with -- absent reflexes,
23 absent, a-b-s-e-e-n-t (sic) --

24 (Interruption)

25 THE WITNESS: -- reflexes, bicep, tricep,

1 brachioradialis on the left side. Diminished
2 sensation ulnar nerve distribution on the left
3 side. Weakness of the left hand.

4 BY MR. HEWSON:

5 Q. And that is what convinced you that there was a
6 ruptured disc at C4-C5 causing that problem?

7 A. The possibility of ruptured disc exists.

8 Q. Very good. You didn't diagnose any other herniated
9 or ruptured discs?

10 A. I suspected one is enough.

11 Q. Did you diagnose any more?

12 A. No, I --

13 Q. Thank you.

14 A. -- did not.

15 Q. You diagnosed a fracture left ribs, six to eight on
16 the left side. Am I right?

17 A. That's correct, sir.

18 Q. And you had no bone scan at the time to refer to?

19 A. No bone, no x-ray, no nothing.

20 Q. And how did you arrive at the conclusion that the
21 fracture on the left --

22 A. By physical examination.

23 Q. So you can determine that -- whether there's a
24 fracture by physically examining the patient, is
25 that correct?

1 A. That's correct, sir.

2 Q. And possible fractured sternum. What part of your
3 examination indicated to you that he --

4 A. Tenderness.

5 Q. -- had a fractured sternum?

6 A. Tenderness over the sternum.

7 Q. Is there any other cause for tenderness over the
8 sternum besides a fracture?

9 A. No.

10 Q. None. Okay.

11 Now, you indicated that there was shoulder
12 abduction of ninety, which I assume is ninety
13 degrees, and forward flexion of ninety degrees --

14 A. Yes.

15 Q. -- in the shoulders, correct?

16 A. That's correct.

17 Q. And that meant that Mr. Waskowski could move his
18 shoulder to ninety degrees in relationship to his
19 trunk, both abducting and flexing, correct?

20 A. Yes, sir.

21 Q. Abduction is what?

22 A. Abduction is abduction.

23 Q. Would you tell the Jury, please, what abduction is,
24 what kind of maneuver that is.

25 A. Moving the arm away from the body.

1 Q. Moving the -- if you have the elbow next to the
2 body, you move it up to the shoulder of the elbow,
3 is that correct -- or the --

4 A. Moving the arm away from the body we call in the
5 Latin abduction.

6 Q. Could you show me abduction, please?

7 A. (Indicating).

8 Q. Thank you. Flexion is what?

9 A. (Indicating)

10 Q. Into the front, correct?

11 A. Yes, sir.

12 Q. And he was able to do that to ninety degrees?

13 A. Yes, sir.

14 Q. Did you ever see the -- well, let me ask you this.

15 Abduction and flexion are active ranges of motion

16 for Mr. Waskowski, correct?

17 A. Yes, sir.

18 Q. You asked him to show you how far he could go?

19 A. Yes, sir.

20 Q. And he only went to those degrees when you saw him,
21 correct?

22 A. Yes, sir.

23 Q. Did you ever look at the first physical therapy
24 treatment records in this matter?

25 A. I don't remember, sir.

1 Q. If the first physical therapy treatment was -- was
2 just days before your treatment and there was a
3 hundred and fifty degrees of abduction -- or a
4 hundred and thirty degrees of abduction and a
5 hundred and fifty degrees of flexion, that would be
6 inconsistent with what Mr. Waskowski demonstrated
7 to you, is that right?

8 A. That's correct, sir.

9 Q. And assuming for the sake of this question that
10 there was a traumatic decrease, forty degrees
11 abduction and sixty degrees flexion, that would
12 raise the specter that perhaps Mr. Waskowski was
13 not fully attempting to demonstrate for you his
14 abduction and his flexion. Is that true?

15 A. No.

16 Q. No. Okay. So he would have gotten worse in the
17 period of time between the physical therapy
18 evaluation and his visit with you. Am I correct?

19 A. Yeah, correct.

20 Q. Pardon?

21 A. It's possible.

22 Q. And to what would you attribute that problem? Why
23 would you -- why would you believe that to be true?

24 A. Because they did not look the scapula, and scapula
25 moving over the chest moves the shoulder, and if it

1 can move with a frozen shoulder, with not frozen
2 shoulder, because it's scapula moving over the
3 chest by the muscle

4 Q. Did you ever diagnose frozen shoulder?

5 A. Excuse me, sir?

6 Q. Did you diagnose frozen shoulder?

7 A. I didn't diagnose -- don't pick up on the word.
8 Don't be a smart ass.

9 Q. Really?

10 A. Yes.

11 Q. Well, let me ask you this. You're the doctor who's
12 telling me that these things are -- are happening
13 and that you're observing them. You write them
14 down because they're important, do you not?

15 A. I write it down because I was teached to write it
16 down.

17 Q. And you write it down so that you can tell from one
18 visit to the next whether the patient is improving
19 or getting worse. Is that a fair statement?

20 A. No, because the law demands.

21 Q. The law demands it?

22 A. That's right.

23 Q. So you don't write these things down for the
24 purposes of maintaining a continuity of treatment;
25 you do it because lawyers are going to look at the

1 documents, is that right?

2 A. I didn't know that there is going to be a case and
3 the lawyer will come and make my life miserable.

4 Q. Well, you knew that there was going to be a case
5 here, didn't you?

6 A. No.

7 Q. Oh.

8 A. I say -- I saw today fifteen patient, and I don't
9 think that all of them have the law cases. Few of
10 them, smart asses, yes, but very few. Sorry.

11 Q. That's all right.

12 A. No, because --

13 Q. That's all right.

14 A. -- because I -- I try to help. I am not a god. I
15 cannot make a miracle, and that's all, and the
16 problem is that the --

17 Q. You read --

18 A. -- word of "frozen" was used because I was trying
19 to tell you that if you have even frozen shoulder,
20 scapula can move your arm to any level.

21 Q. So the finding from Antonio Lasinski (phonetic) of
22 one hundred and thirty degrees of abduction and a
23 hundred and fifty degrees of flexion is suspect in
24 your opinion?

25 A. No.

1 Q. He didn't do the test right?

2 A. He -- he -- I am not a witness to anybody
3 character.

4 Q. All right.

5 A. I am not a right to criticize or tell anything
6 about the lawyer who examine me.

7 Q. Okay.

8 A. I can say what I think. This is United States of
9 North America, and I'm entitled to wrong or not to
10 have my opinion. And that's all.

11 Q. Well, you would agree with me that -- though, that
12 in order to have a medical opinion, you should have
13 a foundation for it. Would you agree with that?

14 A. No, not necessarily.

15 Q. You can just kind of pull it out of the air and say
16 whatever you want, right?

17 A. Yeah. I look at you and I know that you are a
18 little bit above sixty years of age. I know that
19 you're a little bit overweight. I know that your
20 heart is not doing too hot. And I know this only
21 by looking at you.

22 Q. Well, very good.

23 A. If I look for sixty years, I saw maybe three
24 hundred thousand patients.

25 Q. Well, but, then, of course, you don't --

1 A. This is to answer your question.

2 Q. You're not answering my question.

3 A. So I'm not going to fight with you.

4 Q. That's all right. And I'm not going to fight with
5 you.

6 Would you get the Macomb MRI --

7 A. Thank you. Thank you very much. Thank you.

8 Q. Would you get the Macomb MRI from March the 18th,
9 2010.

10 A. Excuse me?

11 Q. The Macomb MRI, --

12 A. Yeah.

13 Q. -- which is an exhibit in this matter from March
14 18th, 2010.

15 MR. TEMROWSKI: Okay. They're on the floor,
16 because we didn't open up the --

17 MR. HEWSON: I don't want you to look at the
18 films.

19 MR. TEMROWSKI: Oh.

20 MR. HEWSON: I want you to look at the
21 reports.

22 MR. TEMROWSKI: Oh, the report.

23 MR. HEWSON: Yeah, yeah.

24 MR. TEMROWSKI: Okay.

25 THE WITNESS: You have over there. Show me.

1 MR. TEMROWSKI: Okay.

2 MR. HEWSON: If you would grab --

3 THE WITNESS: I have a book here of five
4 hundred pages. It's too much to find. Sorry.
5 Give me a break.

6 BY MR. HEWSON:

7 Q. I -- I was just asking you to use the exhibits that
8 have been --

9 A. Okay.

10 Q. -- proffered.

11 MR. TEMROWSKI: Here we go.

12 MR. HEWSON: And could you hand him the MRI
13 from Oakland MRI of the cervical spine as well,
14 please.

15 MR. TEMROWSKI: Yes.

16 MR. HEWSON: Or are they all together?

17 MR. TEMROWSKI: No.

18 MR. HEWSON: Okay.

19 MR. TEMROWSKI: Two different exhibits.

20 MR. HEWSON: All right.

21 BY MR. HEWSON:

22 Q. The Macomb MRI from March the 18th, 2010, says --
23 and we're going to go through these one at time --
24 at C2-3 there was left foraminal encroachment. Is
25 that right?

1 A. Yes, sir.

2 Q. And you sat here and put those films up and showed
3 the Jury that there was left foraminal
4 encroachment. Is that what you intended to show?

5 A. No. You cannot show this exactly. The problem is
6 that you have some shadow, but you don't have a
7 bone. And the shadow is coming with the bulging or
8 herniated disc.

9 Q. Well, let me ask you this. When you read those
10 films just now, --

11 A. Yeah.

12 Q. -- did you see C2-3 left foraminal encroachment?

13 A. Yes, sir. I showed.

14 Q. It was there?

15 A. You wanted me to show you?

16 Q. Hang on. We're going to get there in just a
17 second. The foramina is the little hole in the
18 side of the vertebrae that the nerve exits through?

19 A. No. There's no hole. The vertebra have -- is
20 built without any holes.

21 Q. Okay.

22 A. They have a transverse processes, and transverse
23 process on the other one produce what we call a
24 hole.

25 Q. Okay. What we call a hole --

1 A. And there is not a hole.

2 Q. Okay. Very good.

3 A. Look at this.

4 Q. I understand. And I was just using a term that I
5 understood. The vertebrae are together and
6 separated by the discs, am I right?

7 A. That's correct.

8 Q. And as those bones are there, there is a bony
9 process above and below through which the nerve
10 root exits, and that is called the foramen, am I
11 correct?

12 A. That's correct.

13 Q. And foramen is a latin word for window, am I right
14 about that?

15 A. That's correct.

16 Q. So it's like a hole that the nerve root exits from.
17 You agree with that?

18 A. That's correct.

19 Q. Now, take a look at the Oakland MRI from March
20 24th, 2011.

21 A. March 20 -- yes, I got it.

22 Q. Okay. The Oakland MRI, which you told Mr.
23 Temrowski you had read as well and said were
24 consistent between the two, says C2-C3 level
25 demonstrate no abnormality, bilateral C3 neural

1 foraminal, which is the plural for foramen are
2 widely patent, which means there is no foraminal
3 encroachment?

4 A. No. Because swelling subside and is normal.

5 Q. So --

6 A. There was no ruptured disc and the swelling from
7 trauma subside. If I hit you in your eyes, you
8 have black and blue eyes. If I see you one month
9 later, it's nothing.

10 Q. So, what you're telling me is is that he got
11 better?

12 A. That's correct.

13 Q. Okay. C3-C4, Macomb MRI says there's diffuse
14 posterior disc bulging with left foraminal
15 encroachment.

16 A. That's correct.

17 Q. That's what it says. C2, C3, C4 in Oakland MRI
18 says mild midline herniation effacing the ventral
19 subarachnoid space without cord compression. The
20 cord was not compressed.

21 A. The problem is the disc was ruptured and disc
22 didn't (indicating) suck out.

23 Q. Bilateral C4 neural foramina are widely patent in
24 the Oakland MRI?

25 A. It's good.

1 Q. Correct?

2 A. Yeah.

3 Q. So he doesn't have anything pushing on his cord --

4 A. Oh, --

5 Q. -- at C3-4?

6 A. -- he has pain.

7 Q. Well, no, no. Wait a second.

8 A. C3-4 demonstrate midline herniation. It mean that
9 herniation is not when you want to the side. It's
10 exactly in midline.

11 Q. But it says --

12 A. Midline is -- look at me -- is just here in
13 midline --

14 Q. But it says there's no --

15 A. -- and to the back.

16 Q. -- cord compression.

17 A. Because you don't have to have a cord compression.
18 It's enough that it will touch dura. The spinal
19 cord is surround by the liquid which we call spinal
20 fluid. Around the spinal fluid there are three
21 layers, arachnoid, soft and dura, and touching one
22 of them is enough to cause the pain.

23 Q. Okay.

24 A. Listen, if I touch your skin for a long time with
25 my finger, after twenty-four hours, you will kill

1 me.

2 Q. There's no cord compression, correct?

3 A. That's correct.

4 Q. There's no foraminal compression, nothing's pushing
5 on the nerve --

6 A. That's correct.

7 Q. -- as it exits the vertebral body. Correct?

8 A. That's correct.

9 Q. And if you look at the next one, C4-C5, there's a
10 finding in the Macomb MRI that there's joint
11 spurring and right foraminal encroachment, right?

12 A. C -- which one?

13 Q. C4-C5 --

14 A. C4-C5.

15 Q. -- from Macomb MRI. Joint spurring --

16 A. Posterior -- posterior disc bulging with more
17 prominent disc material involving the right
18 paracentral foraminal degree and joint -- joint
19 spurring in right foramina encroachment.

20 Q. Joint spurring is a degenerative change?

21 A. Yeah.

22 Q. You said there were no degenerative changes.

23 A. No --

24 Q. You were wrong.

25 A. No degenerative changes.

1 Q. So joint spurring --

2 A. This is not --

3 Q. Is joint spurring degenerative change or not?

4 A. No.

5 Q. It's not. Okay. Fair enough.

6 The Oakland MRI says there's no obvious cord
7 compression --

8 A. That's correct.

9 Q. -- at that level.

10 A. Where is the spurring? Where is the spurring?
11 It's a different doctor, so -- and by accident he
12 agree with me?

13 Q. No. Nobody agreed with you.

14 A. Thank you.

15 Q. Nobody agreed with you.

16 A. Thank you.

17 Q. As a matter of fact, you sat there and put your
18 finger on what you claimed to be the spinal cord
19 and said it practically couldn't be seen. That's
20 what you said. Do you remember that?

21 A. No. I never -- no. I say there is a disc material
22 which is obliterating. Instead of a round is
23 making almost triangle of the spinal cord tissue.

24 Q. Sir, the Oakland MRI of March 24th, 2010 directly
25 criticizes the Macomb MRI, doesn't it?

1 A. Well, yes.

2 Q. And says that the findings in the Macomb MRI of the
3 cervical spine don't exist?

4 A. What what?

5 Q. Look at the --

6 A. What -- what -- what -- what did you say? I did
7 not --

8 Q. They don't exist?

9 A. What don't exist.

10 Q. Sir, take a look at impression number three --

11 A. Impression number --

12 Q. -- on the Oakland -- three on the Oakland MRI.
13 There was no --

14 A. Yeah. This report of current MRI of the cervical
15 -- significant different when --

16 (Interruption)

17 BY MR. HEWSON:

18 Q. No, no, no. This report of the current MRI of the
19 cervical spine is significantly different when
20 compared with the previous report of 3-18-2010.

21 A. Yes, sir.

22 Q. Isn't that what it says? There is no bulging of
23 the disc at C2-3 -- C3 level?

24 A. Yes, sir.

25 Q. Or spinal canal stenosis at C4 and C5 levels as

1 described in the previous report?

2 A. Yes, sir.

3 Q. Previously described bilateral foraminal stenosis
4 -- stenosis being the narrowing, am I right? -- is
5 not confirmed in that -- in the current exam except
6 that bilateral C5 neural foramina due to disc
7 herniations at C4-C5. Is that -- did I read that
8 correctly?

9 A. Yes, sir. Perfect.

10 Q. This particular report says that there are material
11 misreadings in the Macomb MRI, --

12 A. No.

13 Q. -- doesn't it? It doesn't. Okay.

14 A. Simply mean that swelling subside.

15 Q. Okay. So when you told Mr. Temrowski moments ago
16 that when you read the films for Oakland MRI and
17 Macomb MRI, they were exactly the same?

18 A. Similar, not exactly the same. Similar.

19 Q. So what was written in the Oakland MRI report, the
20 cervical spine --

21 A. It's less than what is written on Macomb.

22 Q. You didn't note that, did you?

23 A. Why not?

24 Q. Okay. Fair enough.

25 Now, how old are the disc herniations that

1 you're claiming Mr. Waskowski has? How old are
2 they?

3 A. Young. Because the swelling subside within a
4 month.

5 Q. Well, did you rely on Michele Keys' radiology
6 reports?

7 A. No. I rely on the patient.

8 Q. Okay. So what the patient told you is how you'd
9 arrive that these came from this accident,
10 correct?

11 A. That's correct.

12 Q. There's really nothing about the individual discs
13 themselves that tells you what the age is, is
14 there?

15 A. If the swelling subside and the next radiologist
16 didn't see it, it means that the swelling subside
17 because somebody have good tissue which try to
18 recuperate.

19 Q. So he should have been a lot better because the
20 swelling and the pressure were gone?

21 A. It was good enough.

22 Q. It's good enough for what?

23 A. It's a little bit better.

24 Q. You didn't change your prescription, though, at any
25 time, did you?

1 A. Because he has pain.

2 Q. So he tells you he has pain?

3 A. Yes, sir.

4 Q. What clinical correlation, if you can identify one
5 for me, relates the C4-C5 finding from Oakland MRI
6 with no effacement of the spinal cord? What
7 clinical correlation do you have?

8 A. Absent reflexes, diminished sensation.

9 Q. You ordered an MR -- or a E -- or somebody ordered
10 an EMG that's in your file, didn't they?

11 A. EMG, probably Doctor -- the neurosurgeon.

12 Q. Did you get a copy of the EMG?

13 A. Probably I had.

14 Q. And do you remember that the only finding on the
15 EMG from Doctor Broder was carpal tunnel syndrome
16 on the left hand?

17 A. EMG's positive six months to a year after injury.
18 And if the EMG is done before one year, not always
19 is positive.

20 Q. It's got to be a year out, right?

21 A. Six month to one year.

22 Q. So December of 2000 --

23 A. It all depends how much damage, how much long.

24 Q. So December of 2010 would have been a year out from
25 the accident, correct?

1 A. Not necessary. It's positive.

2 Q. Well, the EMG that I have in my hand, which is in
3 your file, is March 24, 2011, so it's outside the
4 year.

5 A. Yeah.

6 Q. So it should be diagnostic?

7 A. Not necessarily.

8 Q. Okay. So, now, let me make sure I understand --

9 A. EMG is positive -- it's negative in forty to fifty
10 percent.

11 Q. Okay.

12 A. MRI is positive in about ninety percent.

13 Q. Let me make --

14 A. X-ray positive in seventy percent.

15 Q. Let me make sure --

16 A. EMG is lousy examination.

17 Q. Okay.

18 A. It's good for a doctor who do it. Excellent.

19 Q. EMG --

20 A. Five hundred to one thousand dollars.

21 Q. Let me make --

22 A. Excellent.

23 Q. EMG is a lousy --

24 (Interruption)

25 MR. HEWSON: I'm sorry. I apologize.

1 BY MR. HEWSON:

2 Q. Doctor, try answering just the question for me.

3 Did you say that an EMG is a lousy examination?

4 A. Yes.

5 Q. Okay. Now, just so we're clear, the MRI from

6 Oakland MRI is -- contradicts your original reading

7 of the films from Macomb MRI, doesn't it?

8 A. Not at all.

9 Q. Okay. The bone scan, the doctor is stupid, and

10 that test didn't agree with your findings, am I

11 right?

12 A. Absolutely right.

13 Q. And the EMG that doesn't show any neuropathies or

14 flexopathies in the leg or in the arm, other than

15 the carpal tunnel, is also wrong and that is a

16 stupid exam --

17 A. No, no. I didn't say --

18 Q. Is that right?

19 A. -- I didn't say wrong. I didn't say stupid. I

20 said that positive in fifty percent.

21 Q. I think you said lousy.

22 A. Lousy, that's right.

23 Q. Lousy. Okay.

24 A. But it's nothing stupid.

25 Q. So the objective testing -- the objective testing

1 in your opinion is all suspect, except for the
2 original Macomb MRIs which you claim to have read
3 and support your diagnosis. That's the only ones
4 you're agreeing with?

5 A. No. It's wrong, because MRI -- both MRI shows
6 herniated disc, both of them.

7 Q. Okay. What is attendant care, sir?

8 A. Try to help dress. He couldn't abduct his arm. He
9 has difficult to dress, difficult to wash himself,
10 difficult to go to bed, difficult to do anything.

11 Q. He couldn't abduct his arm at all?

12 A. We usually -- we are usually two handed people.

13 Q. Couldn't abduct his arm at all?

14 A. Excuse me, sir?

15 Q. He couldn't abduct his arm at all?

16 A. Because he's painful if he move his arm.

17 (Interrruption)

18 THE VIDEO OPERATOR: We're off the record at
19 three thirty-five twenty-one p.m.

20 (Discussion off the record)

21 THE VIDEO OPERATOR: Time is three thirty-six
22 oh three. We are on the record.

23 BY MR. HEWSON:

24 Q. Sir, did you say, at least as of your first visit
25 with Mr. Waskowski, that he could abduct his

1 shoulder to ninety degrees and he could flex his
2 shoulder to ninety degrees?

3 A. That's correct.

4 Q. Did that ever improve in the course of your
5 treatment of him?

6 A. Quite reverse, decrease.

7 Q. It got worse. To what do you attribute the
8 worsening?

9 A. Rupture of more sub -- subtalar -- more rotator
10 cuff.

11 Q. More rotator cuff. Did you ever diagnose a rotator
12 cuff tear?

13 A. Oh, later on I diagnose most likely.

14 Q. Did you ever see that written in any of your
15 reports? I found it if you want to know what date
16 it is, just so we don't have to sit here too long.

17 A. Which one?

18 Q. June 6th, 2011.

19 A. Twenty-six. Which month?

20 Q. June 6th, 2011.

21 A. June 6. That's right.

22 Q. That's the first --

23 A. Contusion of the neck, back and check, torn rotor
24 cuff, left shoulder.

25 Q. That's the first time you made that diagnosis?

1 A. Yes, sir, but we have MRI of the left shoulder
2 which was done long time ago.

3 Q. But it's eighteen months post accident, correct?

4 A. It's my fault that I didn't wrote it down in the
5 proper time.

6 Q. And, in fact, in your physical examinations of Mr.
7 Waskowski, in that eighteen-month period, you never
8 found evidence of a torn rotator cuff, did you?

9 A. How -- I didn't wrote it down, yes, sir.

10 Q. Well, now, wait a minute. You're an orthopedic
11 specialist; that's what you've told us, am I right?

12 A. Yes.

13 Q. And examination of the shoulder and the rotator
14 cuff, there are maneuvers to test that. Am I
15 correct?

16 A. Yes, sir.

17 Q. And you must have done those maneuvers --

18 A. Yes, sir.

19 Q. -- in that eighteen-month period of time?

20 A. Yes, sir.

21 Q. And you never for eighteen months after the
22 accident made a diagnosis of torn rotator cuff?

23 A. Could you imagine, sir, that he has scan, MRI of
24 left shoulder perform on March 24, 2011, which
25 shows partial thickness tear of distal rotator

1 cuff.

2 Q. Sir, my question for you was you've examined him
3 for eighteen months, the first time you make that
4 diagnosis is June of 2011. Am I right?

5 A. No. I first wrote it down.

6 Q. First time you wrote it down?

7 A. That's correct.

8 Q. So you made a diagnosis and you didn't write it in
9 the report?

10 A. This what I suspect, yes, sir.

11 Q. So for eighteen months you didn't diagnose this.
12 That means you didn't treat it?

13 A. No, no. I didn't wrote it. It's completely
14 different story.

15 Q. Okay. So when did you first tell the physical
16 therapist that there was a torn rotator cuff?

17 A. I didn't talk to physical therapist.

18 Q. You didn't tell him.

19 A. I don't know where he go for physical therapy.

20 Q. Okay.

21 A. And I don't plan to never ask where they go.

22 Q. You never got a report from the physical therapist?

23 A. I read the report, but I didn't ask.

24 Q. Did you read the reports?

25 A. Yes, I hope so.

1 Q. So, then, you knew where he was going for physical
2 therapy?

3 A. Yeah.

4 Q. Did you ever communicate with the physical
5 therapist --

6 A. No, sir.

7 Q. -- and say he's got a -- and he's got a torn
8 rotator cuff?

9 A. And I'm not going to plan to communicate because
10 another lawyer will come to take away business to
11 refer to this or this other.

12 Q. All right.

13 A. Oh, of course not you, but there will be some other
14 lawyer.

15 Q. Yeah.

16 A. The same with x-ray, the same with MRI.

17 Q. How did you arrive at twelve hours of attendant
18 care?

19 A. You know, there is some minimum which you supposed
20 to help another human being. Twenty-four hours is
21 too much because you have to sleep eight hours, you
22 have to do something. It means that twelve hours,
23 it's moderation.

24 Q. How did you arrive at the conclusion that it would
25 take two hours per -- or four hours per day for Mr.

1 Waskowski to dress and undress? How did you arrive
2 at that conclusion?

3 A. I didn't arrive at. I don't remember to arrive
4 conclusion four hours.

5 Q. You don't?

6 A. I do gave him twelve hours. What he do with this
7 twelve hours is what he needs. How do I know if he
8 need four hours for this or for this. I am not in
9 his house, and I don't send a spy like a lawyer to
10 check what is going on at home.

11 Q. Well, did you -- forget the spy piece, did you ask
12 -- do you know what an occupational therapist is?

13 A. Yes.

14 Q. Do you know what a functional capacity evaluation
15 is? Do you know? Yes or no?

16 A. It's bullshit.

17 Q. Oh, okay. Well, thank you. I'm sure that those
18 people that perform functional capacity
19 evaluations --

20 A. Okay.

21 Q. -- are not going to be happy with that assessment
22 by you. In any event, --

23 A. Listen, when I graduate there was only surgery and
24 they call it trauma surgery, orthopedic surgery,
25 and suddenly you have physical therapy,

1 occupational therapy, speech therapy, psychiatry

2 therapy, all sucking you, insurance company,

3 because they don't suck anybody else.

4 Q. Okay.

5 A. And this is -- sorry for my upset.

6 Q. So --

7 A. And this is good United States of America which
8 allowed idiots to do the job.

9 Q. Okay. Can you tell me, sir, when you referred Mr.
10 Waskowski to a psychiatrist or a psychologist for
11 review?

12 A. I don't remember. Did I or did somebody else?

13 Q. I don't think you did.

14 A. He has too many doctors anyhow.

15 Q. Well, I thought that you said he had a
16 psychological condition, post tramatic stress
17 disorder?

18 A. I diagnose this. I don't need --

19 Q. Is that your specialty?

20 A. -- anybody -- no, it's not my specialty.

21 Q. Who did you send him to to get treatment for that?

22 A. But if I see the broken people from the car
23 accident. I was six years in Europe. I saw daily
24 three or four people shot down.

25 Q. Who did you send him to for his psychological --

1 A. Nobody.

2 Q. -- or psycho -- so you left him be with that?

3 A. That's correct.

4 Q. Okay. Now, --

5 A. Who send this veteran administration guy --

6 Q. I move to strike.

7 A. -- without the legs from Vietnam.

8 Q. There's no question before you. There's no
9 question before you.

10 A. Nobody send. And suddenly after Afghanistan there
11 are plenty of guy who milking the system.

12 Q. Okay. Well, --

13 A. No, no, it's not okay. No, it's not okay.

14 Q. Did that occur to you relative to Mr. Waskowski?

15 A. No.

16 Q. It didn't?

17 A. No. It occur regarding the guy from An --
18 Afghanistan.

19 (Deposition Exhibit A was
20 marked for identification)

21 BY MR. HEWSON:

22 Q. I'm going to show you what I've marked as Exhibit

23 A. Do you have a copy of that in your file?

24 A. Physician assessment attendant care/personal care.

25 Am I --

1 Q. Take a look at the last page and tell me whether or
2 not --

3 A. Upper body --

4 Q. Sir?

5 A. -- minutes.

6 Q. Sir?

7 A. Yes, sir.

8 Q. Take a look at the last page and tell me if that's
9 your signature on there?

10 A. Yes, sir.

11 Q. It is?

12 A. Yes, sir.

13 Q. Is that in your handwriting?

14 A. Yes, sir.

15 Q. You say on that form that Mr. Waskowski needs four
16 hours a day to change his clothes.

17 A. Four hours a day?

18 Q. Yes.

19 A. Where is this at?

20 Q. The first four entries at the top, dressing and
21 undressing, sixty minutes, that's four hours per
22 day to dress him and undress him?

23 A. This is sixty minutes for --

24 Q. Did you write down --

25 A. Yes, I did.

1 Q. -- four hours?

2 A. Yes, I did.

3 Q. I need you to tell me and tell the Jury how you
4 arrived at four hours a day to change his clothes?

5 A. I don't know.

6 Q. You just made it up?

7 A. I made it up.

8 Q. All right. Now, there are other entries on that
9 form that you made up as well?

10 A. Yes, sir.

11 Q. You don't know whether any of those forms or any of
12 those suggested times is accurate, do you?

13 A. I made it up. I didn't --

14 Q. And you made it up so that the family members could
15 get paid for attendant care, didn't you?

16 A. That's correct.

17 Q. Whether or not Mr. Waskowski needs it, you don't
18 know because you're not in his house, is that
19 right?

20 A. That's correct.

21 MR. TEMROWSKI: Can I see that?

22 MR. HEWSON: Sure.

23 BY MR. HEWSON:

24 Q. My brother counsel showed you a prescription for
25 home modifications, and subject to the objection,

1 depending on what the Court has to say about that,
2 I want to know did you hire or did somebody hire an
3 architect to tell you what home modifications are
4 needed --

5 A. No.

6 Q. -- for Mr. Waskowski?

7 A. Nothing to do with architect.

8 Q. Did you have someone, a physical therapist or
9 someone else go out there and say this is what he
10 needs in his home and therefore he needs
11 accommodations?

12 A. No, sir.

13 Q. So you made that up?

14 A. That's correct.

15 Q. Have you reviewed any of the forms filed by the
16 family that show what the attendant care was?

17 A. I may but I don't remember.

18 Q. State Farm paid you for a while, right? Did they
19 pay you or not?

20 A. State Farm stopped paying me on the -- I'm going to
21 get drunk today.

22 Q. Let me ask you this. State Farm paid --

23 A. Wait a -- wait a second, sir.

24 Q. Sir, --

25 THE WITNESS: Margaret, --

1 BY MR. HEWSON:

2 Q. No, sir. We can't do that right now.

3 A. Can I call my secretary to show me when they were
4 -- where is the bill.

5 Q. So as you sit here right now, you can't identify
6 that, right? We would need to have somebody else?

7 A. I cannot find it. Doesn't mean I cannot identify.

8 Q. Okay.

9 A. I have to find it out. That's all.

10 Q. Fine. That's fine. Let me ask you this. Forget
11 that for just a moment. Your follow-up
12 re-evaluations essentially were for the purpose of
13 writing a prescription to continue the physical
14 therapy and to justify attendant care and household
15 services. That's really what you were doing, isn't
16 it?

17 A. Talk to the patient.

18 Q. And you talked to the patient?

19 A. Yeah.

20 Q. And then you would write him these prescriptions,
21 right?

22 A. That's correct.

23 Q. How long would you talk to him when he would stop
24 by to see you for those follow-ups?

25 A. Half an hour, forty minutes.

1 Q. Half an hour, forty minutes, and all of those
2 conversations are recorded in your file?

3 A. Not only. I have to examine him. I have to check
4 his motion.

5 Q. So you would examine him every time?

6 A. Yeah.

7 Q. Did you write down the ranges of motion every time?

8 A. No.

9 Q. And ranges --

10 A. I wrote that it's change or didn't change. I wrote
11 it what is going on with him.

12 Q. And you were charging two hundred and fifty to
13 three hundred and fifty dollars --

14 A. Too little. Not enough.

15 Q. -- per visit to write those prescriptions for Mr.
16 Waskowski?

17 A. Yes, sir.

18 Q. That's what you did?

19 A. And you paid me hundred forty dollars, and the last
20 time you paid me, dear, sir, on January 2011.

21 Q. And have you --

22 A. Which means that I was treating him for free from
23 January to January, one year -- two years.

24 Q. Did you ever ask him to pay?

25 A. I'm stupid.

1 Q. Did you ever ask him to pay you?

2 A. I don't know if my girl ask or not.

3 Q. Well, --

4 A. This I don't know, because --

5 Q. -- I'm asking -- no, sir.

6 A. Unfortunately I have the office which have the
7 office manager, and I take care of medical as good
8 as I can, as stupid as I am, and she's taking care
9 of a business. I don't look of check. I don't
10 open the mail and I don't send the bill. I see the
11 patient, vaguely she knows how much it's charge and
12 she's charging writing it down and writing it here.
13 I don't know that she sends a letter to the
14 insurance company. It's her job. I cannot
15 influence and I don't want to. I don't plan and I
16 don't have because this is inhuman to check. You
17 trust the secretary or you don't trust. If I would
18 start checking what she's doing, I have to find
19 somebody else.

20 Q. Sir, --

21 A. Sorry.

22 Q. -- is it your practice as an orthopedist to
23 continue treatments that don't work?

24 A. As long as the patient want to come to see me, yes.

25 Q. So you'll treat them even if the patient -- even if

1 the -- the treatment doesn't work, you'll continue
2 to write --

3 A. That's correct.

4 Q. Very good.

5 MR. HEWSON: I don't have anything else.

6 Thank you, sir.

7 THE WITNESS: Thank you.

8 MR. TEMROWSKI: Well, I -- I have just a very
9 few --

10 THE WITNESS: Don't give him a hand.

11 MR. TEMROWSKI: -- a very few follow-up
12 questions.

13 THE WITNESS: You give him a hand.

14 FURTHER EXAMINATION

15 BY MR. TEMROWSKI:

16 Q. Let's start this way, Doctor Glowacki. You've
17 indicated that you are not Board certified?

18 A. That's correct.

19 Q. Is it a legal requirement in Michigan for a
20 physician to practice medicine that they be Board
21 certified?

22 A. No.

23 MR. HEWSON: I'm going to object as to
24 foundation. Go ahead.

25 MR. TEMROWSKI: Okay.

1 THE WITNESS: No.

2 BY MR. TEMROWSKI:

3 Q. Is there a reason in your case, Doctor, why you are
4 not Board certified?

5 A. Because I failed twice. I applied and my English
6 was not good enough. I didn't know how to write
7 the essay and this was at the beginning of my
8 career. I came to United States. I didn't speak
9 English. I didn't speak English. I learn English
10 working in a residency, and then when I get --
11 because I was so smart -- so stupid that I am so
12 smart I will pass the test. It didn't work. They
13 ask me a question, sometimes I didn't understand.

14 Q. Next question, Doctor.

15 A. You know, immigrants are different stock and they
16 are more ambitious than they knew at the beginning.
17 Right -- right now I know a little bit more. I
18 could be different, but it's too late.

19 Q. Okay. Doctor, next question.

20 A. Sorry.

21 Q. Regarding your bill, is it true that the last time
22 you were paid anything from State Farm for treating
23 Mr. Waskowski was in January of 2011?

24 A. That's correct.

25 Q. Okay. Next question. And that is regarding these

1 MRI films that we have in your office here today.

2 Is it --

3 (Interruption)

4 MR. TEMROWSKI: You need to change that?

5 BY MR. TEMROWSKI:

6 Q. Is it your practice, Doctor, as an orthopedic
7 doctor, do you keep patients' MRI films here?

8 A. No, sir.

9 Q. And you were asked by Mr. Hewson if you had, before
10 today, reviewed these MRI films. Remember that
11 question?

12 A. No, sir.

13 Q. Well, he asked you that. I'm going to hand back to
14 you Exhibit Number 2, which is your reports that
15 you've been authoring, and I want you to look at
16 the report that you signed dated May 2010.

17 A. I saw blah, blah, blah... Blood pressure... He
18 brought with him -- we brought -- he brought with
19 him MRI films of lumbosacral spine, done on April
20 15, 2010, which shows herniated disc L4-L5, L5-S1.

21 Q. So Mr. Waskowski brought the films in 2010 to you,
22 according to that, correct?

23 A. Yes, sir.

24 Q. And you reviewed them?

25 A. Yes, sir.

1 Q. And you wrote that report, didn't you?

2 A. Yes, sir.

3 Q. And tell the Ladies and Gentlemen of the Jury,

4 Doctor, who was that report sent to?

5 A. Letter to insurance company, State Farm Insurance

6 Company, P.O. Box 231, Bloomfield, Illinois

7 61702-9738.

8 Q. Okay.

9 A. State Farm Insurance Company, claim 22B077749.

10 Q. And who's the claims adjuster? Is there a name on
11 there?

12 A. Terri Page.

13 Q. Okay. Doctor, Mr. Hewson then asked you a question
14 about the MRI of the left shoulder and your
15 diagnosis of a torn rotator cuff. Do you remember
16 that?

17 A. Yes, sir.

18 Q. And Mr. Hewson was stating that it was eighteen
19 months that went by before you wrote it down.
20 Remember that question?

21 A. Yes, sir.

22 Q. I'm going to hand you back Exhibit Number 2, your
23 report, December 10th, 2010, and I want you to read
24 to the Jury starting with that word "MRI" to the
25 end of the page. What does that say?

1 A. MRI done on 10-4-2010, lumbosacral spine, shows
2 herniated disc L4-L5, L5-S1.

3 MRI of cervical spine done on March 18, 2010,
4 shows herniated disc C4-C5, C5-C6 with spinal
5 stenosis compression and spinal -- of spinal cord.

6 MRI of left shoulder done 9-28-10 shows torn
7 rotator cuff with torn anterior posterior labrum
8 glenoid.

9 Q. Who was that report sent to?

10 A. Letter to chart, insurance company, State Farm
11 Insurance, P.O. Box 231, Bloomfield, Illinois
12 61702-9738.

13 Q. Okay. And who's the adjuster that it was sent to?

14 A. Terri Page.

15 Q. Okay.

16 MR. HEWSON: Can I see that, please. Thank
17 you.

18 BY MR. TEMROWSKI:

19 Q. And last but not least, Mr. Hewson handed you
20 Defendant's Deposition Exhibit A. Remember that?

21 A. Yes, sir.

22 Q. Well, just so we're all clear on this matter,
23 Doctor, that is a form -- can I see that? -- that
24 is a form that was prepared by who? Take a look at
25 that symbol up at the top.

1 A. AAA.

2 Q. No, not --

3 A. No. State Farm Insurance Company.

4 Q. Okay. So, Doctor, that form that Mr. Hewson asked
5 you about came from State Farm, is that right?

6 A. That's correct.

7 Q. And State Farm sent you, as Mr. Waskowski's doctor,
8 that form for you to complete, didn't they?

9 A. That's correct.

10 Q. And on this form you were asked to complete the
11 applicable sections of the form only, and it says
12 that right at the top, doesn't it?

13 A. That's correct.

14 Q. About the attendant care. And there's a whole
15 bunch of different categories, and isn't it true,
16 Doctor, and I don't want to put words in your
17 mouth, take it back and look at it, that a lot of
18 those categories on that form don't pertain to Mr.
19 Waskowski?

20 MR. HEWSON: Objection, leading.

21 THE WITNESS: Yes. Applies cream, lotion,
22 paste, none. Bath -- bed, bath, oral hygiene,
23 assisting dressing applicant, using prescribe
24 orthotics, braces, apply super fluid, limp, a lot.
25 About twenty different.

1 BY MR. TEMROWSKI:

2 Q. Okay. In some of these --

3 A. Absent.

4 Q. And -- and -- let me see. Some of these questions
5 ask about orthotics, prosthetics, bowel care,
6 tracheotomy care. Did any of that apply to Mr.
7 Waskowski?

8 A. No.

9 Q. But certain categories did apply to Mr. Waskowski,
10 didn't they?

11 A. Yes.

12 Q. And didn't you complete and fill out the State Farm
13 form for the sections that applied to Mr.
14 Waskowski?

15 MR. HEWSON: Objection, leading, Go ahead.

16 BY MR. TEMROWSKI:

17 Q. Did you complete the applicable sections of the
18 form that you felt pertained to Mr. Waskowski?

19 A. Yes, sir.

20 MR. HEWSON: Same objection.

21 BY MR. TEMROWSKI:

22 Q. So how is it that you made anything up, Doctor,
23 when you completed a form that you were asked to by
24 State Farm?

25 MR. HEWSON: Objection, leading,

1 argumentative. Go ahead.

2 THE WITNESS: I wrote how I expect that he
3 need for assistant and the help.

4 BY MR. TEMROWSKI:

5 Q. Okay. You didn't make anything up?

6 MR. HEWSON: Objection, leading.

7 THE WITNESS: Of course not.

8 MR. HEWSON: Objection. I have it.

9 BY MR. TEMROWSKI:

10 Q. Take a look at the last page of that exhibit, and
11 that asks about household help, doesn't it?

12 A. Yes, sir.

13 Q. And didn't you also at the request of State Farm
14 complete that form?

15 A. Yes, sir.

16 Q. And did you indicate on that form, Doctor, the
17 household chores that you felt Mr. Waskowski
18 couldn't do?

19 A. That's right.

20 Q. Okay. And on this exhibit, for both the attendant
21 care and the household help, it asks for how many
22 days or times per week, and what did you put?

23 The last column. The last column here.

24 A. Seven --

25 Q. Seven days a week?

1 A. -- days a week.

2 Q. Okay.

3 MR. TEMROWSKI: Thank you.

4 THE WITNESS: Seven days a week.

5 MR. TEMROWSKI: Okay. I have nothing else.

6 MR. HEWSON: Can I have that exhibit back,
7 please.

8 MR. TEMROWSKI: Yep.

9 MR. HEWSON: Thank you.

10 FURTHER EXAMINATION

11 BY MR. HEWSON:

12 Q. Sir, the December 10th, 2000 (sic) report that my
13 brother counsel showed you just a moment ago --

14 A. Excuse me.

15 Q. The December 10th, 2010 report, where you reported
16 the MRI of the left shoulder showing a torn rotator
17 cuff?

18 A. Yes, sir.

19 Q. He asked you whether or not that MRI interpretation
20 was rendered on your report of December 10th. You
21 remember being asked that? See it?

22 A. MRI --

23 MR. TEMROWSKI: Wait a minute. You need a
24 microphone.

25 THE WITNESS: -- left shoulder done 9-28.

1 BY MR. HEWSON:

2 Q. Right.

3 A. December 10, 2010.

4 Q. That's what I asked you. Have a seat. Tell the
5 Jury when -- where that is on your diagnosis for
6 that date. Is it on there? Torn left rotator
7 cuff?

8 A. No.

9 Q. It's not. And that set of diagnoses are what you
10 claim is related to the auto accident. That's why
11 you have status post motor vehicle accident at the
12 top, --

13 A. Yes, sir.

14 Q. -- isn't that right? You didn't tell State Farm
15 about the torn rotator cuff in that report as being
16 related to this auto accident, did you?

17 A. I didn't wrote it.

18 Q. Now, Mr. Temrowski asked you about filling in this
19 form, and I asked you before how you came up with
20 four hours for changing his clothes.

21 A. Seven days a week.

22 Q. Four hours a day, seven days a week?

23 A. Four hours, seven days a week. Forty minutes,
24 seven days a week.

25 Q. Forty minutes seven days a week?

1 A. Yeah.

2 Q. That's what you meant?

3 A. That's correct.

4 Q. So if I take these as being forty minutes, and I
5 add up the numbers that you gave, I'm supposed to
6 spread that over seven days?

7 A. That's correct.

8 Q. Okay. So we're talking about eight minutes a day?

9 A. Ten to fifteen.

10 Q. Eight minutes -- all right. Ten to fifteen minutes
11 a day.

12 A. Yeah.

13 Q. And if I add all of these up, it comes to about an
14 hour and a half?

15 A. You're joking.

16 Q. I am not.

17 A. You are.

18 Q. If I do what you just suggested in order to justify
19 your prior testimony, if I divide the number of
20 days into the number of minutes --

21 A. Come on. I will add it.

22 Q. Absolutely.

23 A. No, no. Come on, let me add it.

24 Q. No. We're going -- we're going to do it my way.

25 Seven into sixty is approximately eight minutes a

1 day. You agree?

2 A. What -- what do you mean?

3 Q. Seven times a week times sixty minutes is eight
4 minutes a day?

5 A. No. Sixty by seven.

6 Q. Eight times seven is fifty-six.

7 A. Around ten minutes.

8 Q. Ten minutes a day. Four. So that's forty minutes
9 for the first category. About fifteen minutes for
10 the second sets of categories, you've got on here
11 justification, if that's what you meant to do, for
12 about an hour of attendant care a day?

13 A. No.

14 Q. No. Okay. Very good. The Jury can do the math.

15 A. I could be wrong because I gave a patient twelve
16 hours. I gave what supposed to be divided, and
17 that's all what I did. And whatever you want to
18 put into my mouth, you are welcome.

19 Q. I just want --

20 A. You are a lawyer.

21 Q. I want the Jury to understand what you're saying.

22 A. No, no, don't twist the Jury. You're twisting the
23 Jury, because you're twisting my report.

24 Q. Yeah. Okay. Then I want you to tell me how you
25 justify twelve hours a day of attendant care in

1 your report. Just tell me how you did that.

2 A. Because he cannot do many things.

3 Q. Okay. Right. You said before you made it up.

4 Yes? Did you say that?

5 A. I'm trying to pull your leg and you didn't
6 understand this.

7 Q. Oh, you were just kidding around?

8 A. You're a smart guy.

9 Q. Okay.

10 A. Whatever.

11 MR. HEWSON: Fair enough. I have nothing
12 else.

13 FURTHER EXAMINATION

14 BY MR. TEMROWSKI:

15 Q. Doctor, there's --

16 MR. HEWSON: I'm going to object. There's no
17 Recross, but go ahead.

18 BY MR. TEMROWSKI:

19 Q. When it comes to attendant care, isn't it true that
20 there's no book that a doctor can go to to look up
21 what is the correct answer for the number of hours
22 a day attendant care?

23 MR. HEWSON: Objection, leading.

24 THE WITNESS: Absolutely true.

25 MR. HEWSON: Objection, leading.

1 BY MR. TEMROWSKI:

2 Q. And you, Doctor, prescribed for Mr. Waskowski and
3 you wrote it down a hundred times, twelve hours a
4 day attendant care. Is that right?

5 A. That's correct, sir.

6 Q. And that's on your disability certificates and your
7 letters?

8 A. That's correct, sir.

9 MR. TEMROWSKI: Thank you. I have nothing
10 else.

11 FURTHER EXAMINATION

12 BY MR. HEWSON:

13 Q. And you don't know how you came up with twelve
14 hours?

15 A. Because he need it.

16 Q. Oh, okay. Very good.

17 MR. HEWSON: I have nothing else. Thanks.

18 MR. TEMROWSKI: No other questions.

19 THE VIDEO OPERATOR: Deposition is concluded.

20 The time is four oh five oh seven.

21 (Videotape deposition concluded at 4:05 p.m.)

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25

1 CERTIFICATE

2 STATE OF MICHIGAN

3 COUNTY OF OAKLAND

4 I, Maureen M. McLaughlin, C.S.R. and Notary Public in
5 and for the County of Oakland, State of Michigan, do hereby certify
6 that the witness whose attached deposition was taken before me on the
7 date hereinbefore stated, was first duly sworn by the Notary Public
8 to testify the truth, the whole truth and nothing but the truth in
9 the cause aforesaid; that the testimony contained in said deposition
10 then given by said witness was by me reduced to writing in the
11 presence of said witness by means of shorthand and afterwards
12 transcribed upon a computer by myself. The said deposition is a true
13 and correct transcript of the testimony given by said witness as
14 aforesaid.

15 I do further certify that the deposition herein
16 attached was taken at the time and place mentioned and described in the
17 caption of said deposition.


18 I do further certify that no request was made by
19 any party for the witness' signature to be attached to said deposition.
20

21 I do further certify that the parties were
22 represented by counsel as hereinbefore designated.

23 I do further certify that I am not connected by
24 blood or marriage with any of the parties or their attorneys or agents
25 and that I am not an employee of either of them, nor interested

1 directly or indirectly in the matters of controversy either as counsel,
2 agent or otherwise.

3 I do further certify that my certificate annexed
4 hereto implies to the original and typewritten copies only, signed
5 and certified transcripts only. The undersigned assumes no
6 responsibility for the accuracy of any reproduced copies not made
7 under my control or direction.
8

9
10 
11 Maureen M. McLaughlin, CSR - 4400
12 Notary Public, Oakland County
13 My Commission Expires: 05-12-2017
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